

IMMANUEL KANT'S CATEGORICAL IMPERATIVE AND THE QUESTION OF ABORTION IN NIGERIA

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Abstract

Clandestine abortion no doubt has been predominant in the Nigerian society over the years. This malaise of course has great effect on the life of posterity of the Nigerian society. Not only that it puts the future generations of Nigerian citizens into a state of jeopardy, as such it has generated certain moral questions. Thus the aim of this chapter is to analyse Immanuel Kant's Categorical Imperatives in relation to the question of abortion in Nigeria. The issues of abortion as this research observed is not just the business of teenage unwanted pregnancy but also the business of women with unplanned pregnancy due to Nigeria's low contraceptive prevalence. The paper work addresses how to make a moral decision as humans before committing such atrocious act through the instrumentality of Kant's ideas on reason as the source of moral law, particularly his categorical imperative. It will expound the dignity of human person as a response to this termination of life through abortion by exploring two arms of Kant's categorical imperative which are; (i) persons as an end in themselves and (ii) persons as moral legislators (which is sometimes called the "principle of autonomy). Through the first arm of Kant's categorical imperative: conformity to a universal law, the paper looks at the place of abortion in Nigerian legal system. The chapter also x-rays the positions of both prolife and prochoice and how their debates is driving the pro-abortionists and anti-abortionists movement in Nigeria. Consequently, the chapter in alignment with Immanuel Kant's thought proposes that human rational nature which is the only guide to a morally justified decision suggests that human life at any stage of existence should be respected and dignify. Therefore, abortion is morally impressible and should remain illegal in Nigeria because it affects the sanctity of human life, the right of existence of the embryo as a rational person with intrinsic value and autonomy with which by that nature deserves to live.

Keywords: abortion, Kant, Nigeria, Law, Morality

Introduction

The aim of this chapter to employ Kantian categorical imperatives in interrogating the moral issues that surrounds voluntary or induced abortions in Nigeria. No doubt abortion debate is heated topic in our contemporary society which has be polarized between prolife and prochoice. On legal side, it has be further polarized between anti-abortionists and the pro-abortionists. Thus the question before is whether voluntary abortion is morally permissible or morally impermissible? What is ethical basis for the permissibility or impermissibility of voluntary? To answer this question we shall be analyzing Immanuel Kant's categorical imperative in relations to this questions.

Immanuel Kant (1724-1804) was born at Konigsberg (East Prussia, now Kaliningrad in USSR), Russia. He is a son of a saddler, reputedly of Scottish origin, raised in relative poverty and the puritanical strictness of pietism. Kant entered university of Konigsberg located in his home town where he studied mathematics and philosophy. He later became a lecturer and consequently a professor of philosophy in the same institution.

The greatest member of the idealist school of German philosophy, Immanuel Kant, according to Paton, was the leading philosopher of the European enlightenment, whose ideas influenced many thinkers in Germany during his life time. He settled and moved philosophy beyond the debate between rationalists and empiricists. Philosophers such as Fichte, Schelling, Hegel, and Schopenhauer, amended and developed the Kantian system, thus bringing about various forms of German idealism. Paton holds that Kant is seen as a major figure in the history and development of philosophy. German and European thinking progressed after his time, and his influence still inspires philosophical work today. Kant categorical imperatives is unique because it provides a nontheistic basis for ethics. This the rationale for choosing Kant for this discourse on abortion.

Nonetheless, both in the extant literature and the wider society abortion question has remain a recurrent theme of discourse. This is why Noonan in his book *An Utmost Absolute Value in History of Social Ethics, Morality and Social Policy*', reacting to the question do we have the right or the moral justification to terminate the process of personhood? He insists that if you are conceived by human parents, you are human. Thus: The positive argument for conception as the decisive moment of humanization is that at conception, the new being receives the genetic cord. It is this genetic information, which determines his characteristics. A being with a human genetic

code is a human being.¹ This implies that life begins at conception. At this point the fetus is enshrined with features of human being and therefore cannot be denied to live. There is no dividing line between a fetus and an infant (man). Koop in his book *The Right to Live: The Right to Die*, strengthened this by saying that “Human life begins at conception and is continuous, whether intra or extra-uterine until death”.² Hence, without the fetus, existence of a child would be highly impossible.

On a contrary note, Derek asserts that experience of legal abortion in the United States of America and Britain has been carefully documented and analyzed. These investigations show that since legal abortion has been introduced, the number of deaths due to abortion has dropped dramatically.³ Abortion in United States of America today, is a matter of choice, on whether the person involved wants abortion to be carried out or not, without the interference of the law. This is quite different from what is obtainable in Nigeria, despite the daily procurement of abortion by some Nigerians, the practice still remains illegal. Though the illegality of abortion in Nigeria has little or no effect on the number of abortions carried out, for many people still indulge in it. However, the moral question is what is our interest here not its legality.

In addition, this chapter intends to examine and appraise abortion critically and philosophically with a view to bringing to the limelight, the negative implications of abortion and how it affects the sanctity of human life. Abortion has so many implications; religious, socio-economic, biological and ethical implications. The work adopts Kant's idea of goodwill, which discourages one from performing an action because of its end result. An action is said to be praiseworthy, when it is performed with the right motive of duty. Duty is to be performed entirely for its own sake. Following Kant's ethical principles, the work vehemently nullifies all the flimsy excuses that the pro-choice see as reasons for carrying out abortion. Such as deformity, privacy of the mother, rape, teenage pregnancy, education of the mother, population control, etcetera. It also refutes their notion that holds that the unborn belong to the subhuman group and their claim that life begins after birth when the baby breaths air. The position of the pro-abortionists that abortion can sometimes be allowed to save the mother's life in danger since the unborn fetus is not a fully developed human but merely a potential human being who is at the process of gradual development into a human is rejected. As such the chapter shall argue the claim that abortion is termination of human life and it is not morally permissible.

¹ John T. Noonan Jr, “The Morality of Abortion: Legal and Historical Perspectives”, ed., *An Utmost Absolute Value in History of Social Ethics, Morality and Social Policy* (Cambridge, MA: Harvard University Press, 1970), 67.

² Schaeffer Everett Koop, *The Right to Live: The Right to Die*. (Wheaton: Tyndale House Publishers, 1976), 46.

³ Jones Derek, *Every Woman: A Gynaecological Guide for Life*. (Dahon: Safari Books, 1993), 15.

Conceptual Clarification

Abortion

Etymologically, it comes from two Latin words *abortus* and abortive meaning miscarriage, premature birth or perishing by an untimely birth respectively. Hence, in the widest intention of the word, abortion includes all cases of fetal expulsion from the womb whether inadvertently – miscarriage or spontaneous abortion or induced – abortion on demand.⁴ However, in its most concise extension, abortion so to speak denotes all cases of induced abortions. It is in this understanding that Fagothey states that: “abortion is the expulsion of a non-viable fetus, which is of one too young to live outside the womb.”⁵ In the opinion of Callahan, it is the “ending of a pregnancy before the embryo or fetus can live outside the female body.”⁶ For Mathews, it is “the termination of pregnancy before independent viability of the fetus develops.”⁷ These foretasted definitions excluded the natural cases of abortion because to expel or to terminate, lexically speaking suggests a human subject with an intention to achieve expulsion.

Life presents itself as a mystery, even to the possessor. This is because its 'where from' and 'where to' even its 'why' is quite beyond his comprehension. However, philosophical thinking traces life to the ultimate being '*esse in se*' or God in the language of religion. Accordingly, a novel perspective arises in which human life is seen as sacred, having a sublime dignity, purpose and thus should be judiciously guarded. In the above light, the immanent instinct to preserve life known as the law of self-preservation which is operative in all living things is preeminent especially in 'human' beings.

Sequel to the above analysis, abortion as we shall try to understand it is one of the most fundamental anti-life preservation practices. Viewed in its right perspective then, abortion is synonymous with “killing” as it interferes with nature in a way that results to the death of a person.

Following the above line of thought, in this chapter, we shall delineate abortion to mean all cases of voluntarily and artificially induced termination of pregnancy with the implicit or explicit intention of bringing about the death of the fetus and in which case the intention is realized. Comprehending it this way will help eliminate the deficiencies of the above definitions which relegated to the background, the question of intention and its realization.

⁴ Roe v. Wade (1973) 410 U.S. 113, 93 S.Ct. 705. See also Webster v. Reproductive Health Services 109 S.Ct. 3040, 106 L. Ed. 2d 410.

⁵ A. Fagothey, *Right and Reason* Columbus, c.u. Moshby Co., 1959, p. 241.

⁶ D. Callahan, “Abortion” *World Book Encyclopaedia* Chicago, Child-craft International inc., 1979, p. 149.

⁷ H.M. Leonard, “Abortion” *Encyclopaedia Britannica* New York: William Benton Pub., 1972, p.42.

Abortion, strictly speaking must not be confused with feticide, which is abortion plus some other elements. According to Higgins, it involves: “the direct killing of the fetus in the Mother's womb after which it is expelled.”⁸ In any case, the concept of abortion and feticide is interwoven as many abortion methods kill the fetus before inducing expulsion.

Next are the cases of miscarriage, still birth,⁹ and hastened births,¹⁰ these in the strictest sense of the word are not abortion. For instance, miscarriage is an act of man and not a human act; therefore, it is devoid of all imputability and moral responsibility.

Kinds of Abortion

According to Callaham, “an abortion results to the death of the fetus and may be either spontaneous or induced.”¹¹ Therefore, we distinguish between two major kinds of abortion-induced and spontaneous types.

Induced Abortion

This is also called abortus provocatus.¹² It is abortion qua abortion, since it is here and only here that the question of end, intention, and the presence of human act can rightly be asked and where moral responsibility and social imputability, praise or blame, could be assigned. Abortion is induced when the act is intentionally carried out throughout the period of “gestation.”¹³ For Niedermeyer, it is “abortion induced by external action,”¹⁴ in which case it is unnatural. This was why Callaham noted that “in induced abortion, the fetus is removed by artificial, usually medical means.”¹⁵ Induced abortion is further divided into direct and indirect abortion.¹⁶

Direct Induction

Abortion is said to be directly induced when the fetal expulsion is the aim of the act or a means of achieving an aim, for instance aborting to save the mother's life. In direct induction, three conditions are fulfilled:

1. It is directly intended as an end or a means
2. It is artificially carried out
3. The end result is always the death of the fetus or embryo¹⁷

⁸ J.T. Higgins, *Man as Man*, Baltimore, Bruce Pub. Co., 1949, p. 252.

⁹ Hastened Birth: Premature Induction of birth for medical safety.

¹⁰ Still birth: Expulsion of dead foetus.

¹¹ D. Callaham, op. cit., p. 149.

¹² Induced abortion.

¹³ Gestation: time lapse between conception and delivery.

¹⁴ A. Niedermeyer, *Compendium of Pastoral Medicine*, New York, Joseph F.W. Inc., 1960, p.211.

¹⁵ D. Callaham, op.cit., p. 149

¹⁶ Ibid.

¹⁷ Ibid.

Indirect Induction

Under indirect abortion, the end of the action is never intended to be the death of the fetus, rather, it is permitted as an unavoidable side effect of a directly willed end. An example is where the death of the fetus results in an attempt to treat a cancerous uterine wall of the mother. Jonas expressed this view when he wrote:

“Some medical treatment is performed for a serious purpose other than abortion but abortion results.”¹⁸ It is precisely in this connection that the “principle of double effect” can intervene to justify abortion.

Therapeutic Abortion

Abortion is therapeutic if “the purpose is the saving of the mother's life or health.”¹⁹ In which case, it is an intentional removal of the fetus from the uterus owing to some medical indications. Further still, the issue of therapeutic abortion concerns not only the mother's health but also the fetus. Jonas clarified this in the following statement “This is a case of legitimate pregnancy that is developing into a serious threat to life of the mother, the child or both.”²⁰ But the question is, how therapeutic is that which takes away the fetal life?

We can further distinguish direct and indirect; criminal and legal therapeutic abortions. It is directly therapeutic if “the doctor intends the death of the child in order to cure the mother.”²¹ But it is indirectly therapeutic if the child accidentally dies, in the doctor's process of saving the mother. In which case it is not directly willed, not a free act but simply permitted as an undesirable side effect.

Therapeutic abortion is criminal, if it is procured outside the stipulations of the law-legal indications. It is however legal when it is carried out within confines of the law. Instances of this abound, like in the 1973 American Supreme Court decision, which allowed, abortion if the doctor approves the woman's intention to do so, and which must fall within the first three months of pregnancy.

Immanuel Kant's Categorical Imperatives

According to Kant, the moral law is presented to us as a categorical imperative. It tells you what you ought, should, or must do, but it does not depend on any prior conditions, or subjective wants and wishes, and it contains no qualifications. It takes the form “Do X!”²² It is not preceded by any 'if clause', for it tells you what you are morally commanded to do under all conditions and at all times. However, if such a moral law does not come from some external lawgiver such as God, who issues such

¹⁸ J. Okoye, *Abortion and Euthanasia the Crime of Our Day*, Awka, Kecena Damian press, 1987, p. 17.

¹⁹ *Ibid.*, p. 18.

²⁰ *Loc. Cit.*,

²¹ Obielu, *Studies in Ethics*, A moderated Research Work, St. Joseph's Seminary, Ikop Ekpene.

²² *Ibid.*

commands to you? The lawgiver for Kant is reason itself. A rational rule is one that is universal and consistent. It is universal in that it is a rule that applies to all people, at all times, and in all circumstances. It is consistent in that it does not lead to any contradictions.

Categorical Imperative: Kant's First Moral Principle

Kant expresses the first version of his moral principle in this way:

There is, therefore, only one categorical imperative. It is: Act only according to that maxim by which you can at the same time will that it should become a universal law.²³

However, notice that Kant has not given us any specific maxims. Instead, he has given us the principle that we use to decide which maxims establish our actual moral obligations and which ones do not. Let's examine one of the examples Kant uses to illustrate his categorical imperative. Suppose you need to borrow some money but to do so you must promise to repay it even though you know full well that you will not be able to keep the promise. If you apply Kant's principle, you will discover that the maxim on which you are acting is "If I need to make a promise I may do so, even though I do not intend to keep it." But could you rationally will that this would become a universal law that everyone followed? Surely not. If everyone adopted this rule, then promise making would be meaningless and there would be no point in making or accepting promises. Your deceitful promise will be accepted only if others have respect for promises. Hence, you can apply your rule concerning promises only if no one else follows it.

Categorical Imperative: Kant's Second Moral Principle

Kant believes that there is only one principle of morality, but that it can be given at least three different formulations. Each one is equivalent to the others, but each one emphasizes a different aspect of the morality of reason. His second version of the categorical imperative is as follows:

Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.²⁴

This means that each person has intrinsic worth and dignity and that we should not use people or treat them like things. Kant's argument for this principle could be paraphrased in the following manner. Mere things such as cars, jewels, works of art, or tools have value only if persons endow them with value. In other words, a Rembrandt painting will sell for \$1 million only because many people desire it.

²³ Ibid, 373.

²⁴ Ibid.

Accordingly, such things only have conditional value because if people stop desiring them, they will be worthless. However, insofar as persons are noumenal selves that transcend their empirical appearances, persons are not things. Since persons are the source of all conditional value, they cannot have conditional value themselves, but must have absolute or intrinsic value. No one can give you your worth as a person, nor can he or she take it away.

Categorical Imperative: Kant's Third Moral Principle

Kant's third formulation of the categorical imperative centers on “the idea of the will of every rational being as making universal law”²⁵

This is sometimes called the “principle of autonomy.” Central to the autonomy of the will is freedom. When my moral principles are based on an external authority or even my own inclinations, my reason is not acting freely but is bound by something alien to it. Hence, the moral law is not something that imposes itself on me from without, but is an expression of my own, rational nature. In morality, each person wears two hats. Insofar as we are truly moral agents, we are bound by the moral law. However, insofar as we are rational persons, we are autonomous legislators of the moral law. If all people obeyed the law of reason, they would constitute a perfect community (a kingdom of ends, Kant calls it), in which everyone would be autonomous, yet everyone would follow the same, universal morality.

The Philosophical Debates On Abortion Between Prochoice And Prolife

In this section, we shall objectively present the philosophical debates between Prolife and Prochoice with particular reference to the assumptions, biases and logic. This debate is what is driving the legal debates between Pro-abortionists and Anti-abortionists in Nigeria. Considering the abortion challenges, Ekennia avers that abortion motivated by social conditions may have different and complicated grounds. He painted a very vivid picture of the conditions touching deeply on human emotions and dignity. He asked: consider a situation where armed robbers invaded a family and raped a mother and her daughters, or even nuns. What would happen if some of them become pregnant from this rape? Suppose a father puts her daughter in a family way or a girl become pregnant from her cousin, or a girl of thirteen years becomes pregnant, what would be the best action to take? What would happen if an undergraduate female student is pregnant without being sure of who might be responsible? Finally, suppose a woman whose husband lives in a foreign country, becomes pregnant a few months before the expected return of the husband, what would she do?²⁶

²⁵ Ibid, 374.

²⁶ Justin Ekenna, *Bio-Medical Ethics: Issues, Trends and Problems*. (Owerri; Barloz Publisher, 2003), 46.

Some of these questions, though hypothetical, could have some resemblance of historical scenarios. Different women might react differently to these scenarios but experience shows that majority of them would opt for abortion. The above instances are pointers which show that abortion confront people at what we may call the 'limit points' in their lives, that is at a cross-road, where they would not know whether to go to the right or to the left. The demand for abortion meets them at a point where "what ought I to do now?" become a situation of "to be or not to be". In fact, the arguments for abortion rotate around human situations and we shall attempt to classify the arguments or reasons for wanting to procure abortion as follows:

The first is the advocates of abortion who argued that it is justified to carry out abortion in case of rape. They opine that it is a heavy load imposed on such a mother against her will.

The second argument the pro-choice raised concerned the social and economic factor. They argue that if a child would be social and economic burden to a mother or family, it is a sufficient reason to carry out abortion. And also if the would-be mother is unmarried, in order to avoid shame and damage to her reputation, it is better to induce abortion to save her from embarrassment.

The third has to do with the pro-choice insistence that abortion should be induced for medical or therapeutic reasons. According to them, when the life of a pregnant woman is seriously threatened health-wise, it warrants abortion to be carried out to safeguard the life of the woman.

The fourth displayed the pro-choice thinking that over population is a possible reason for inducing abortion. According to Ikwun, over population accompanies many negative trends. It brings undue pressure on scarce resources and adversely effects the environment.²⁷ This argument about overpopulation sounds valid at a glance but one need to know that nature abhors vacuum. Nature has a way of taking care of itself. Some nations have tried to embark on such a project in the past but are today paying couples to bear more children because of the shortage of man power in the labor market.

Fifth, Feminism, that is, women's liberation movement advocates for freedom to use their bodies as they like in order to exercise their rights against male domination. The current arguments is that abortion is women right as such it should be protected by the law and not made illegal.

More so, pro-choice justify abortion and looks at it as something permissible, philosophers of pro-life question the plausibility and justification of their arguments.

²⁷ R. Ikwun and G. Ntamu "Over Population and the Crises of Hunger and Property in SubSaharan Africa: The Way Out". An African Journal of Philosophy. 9.1. (2006). 108-115.

The philosophers of pro-life centered their argument on the status of fertilized ovum. They argued strongly against the pro-abortionists claim that fetus is nonhuman. Hence, maintaining that human life begins at conception.

Indeed, for the anti-abortionists, human life begins at fertilization. They asserted that the entity that results from fertilization is new living reality and it is human. What it requires to be fully developed is adequate environment and favorable conditions.²⁸ In line with this argument, Lowen in her article titled “Abortion Arguments from Pro-life and Pro-choice Sides and Main Points of Debate”, maintains that: Since life begins at conception, abortion is akin to murder as it is the act of taking human life. Abortion is indirect defiance of the commonly accepted idea of the sanctity of human life.²⁹

Ozumba stresses that abortion is not only dehumanizing, it is a murder. In the process of trying to exterminate the fetus, the mother at the same time is exposed to discomforts, pain and uncertainty.³⁰ The philosopher of pro-life advice in the instance of rape and incest, that irrespective of the psychological trauma about the forceful sex, that the solution is not abortion. It is better to deliver the baby and see him/her as an innocent child, who knows nothing about the incidence that preceded his/her arrival.

Abortion in Nigeria: Few Statistics

As someone who lives in Nigeria. I can say that sometimes it seems like there is nothing like the act of abortion in the country. But it may be noticeable among the youth who sometimes desires to express their sexual nature. Also, medical personnel in the country is in a better ground to expose the state of abortion practice. Guttmacher pointed out in her publication that:

- In Nigeria, abortion is legal only when performed to save a woman's life. Still, abortions are common, and most are unsafe because they are done clandestinely, by unskilled providers or both.
- Unsafe abortion is a major contributor to the country's high levels of maternal death, ill health and disability. Nigeria has one of the highest maternal mortality ratios in the world, and little improvement has occurred in recent years.
- Contraceptive use remains low in Nigeria. In 2013, only 16% of all women of reproductive age (15-49) were using any contraceptive method, and only 11% were using a modern method—levels that remain virtually unchanged since 2008.

²⁸ Ben O. Eboh, *Living Issues in Ethics*. (Nsukka: AFro-Orbis Publishers 2005), 164.

²⁹ Linda Lowen, *Abortion Arguments from Pro-life and Pro-choice Sides and Main Points of Debate*. <http://womensissues.about.com/od/reproductiverights/a/AbortionArgument.htm>. Retrieved on 07 May 2022.

³⁰ G. O. Ozumba, *The Great Philosophers*. (Awka: R & K Enterprises, 2000), 137.

- On average, Nigerian women want 5.2 children, compared with the 5.5 children they are currently having.
- Fourteen percent of all women aged 15–49 in Nigeria have an unmet need for family planning: They are married and/or sexually active and they want to space their births or stop childbearing, but are not using contraceptives. Among sexually active unmarried women, 22% have an unmet need.
- In 2012, about one-fourth of Nigeria's 9.2 million pregnancies were unintended a rate of 59 unintended pregnancies per 1,000 women aged 15–49.
- More than half (56%) of these unintended pregnancies ended in an induced abortion; 32% ended in an unplanned birth and 12% in a miscarriage.³¹

From the above point of Guttmacher, it is obvious that Nigerian society cannot but be said that it has experienced criminality of abortions either by natural means or induced means.

Abortion Law in Nigeria

In all parts of Nigeria, abortion is a criminal offense except where it is performed to save the life of the mother. In the South, the relevant provisions are sections 228, 229, 230, 297, and 328 of the Criminal Code.³² In the North, the relevant provisions are sections 232, 233, 234, 235 and 236 of the Penal Code.³³ For the states that have adopted the Sharia Legal System, abortion is also criminalized by the Sharia Penal Code Law. For instance;

The Criminal Code

1. Section 228 – Attempt to Procure Abortion

“Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony and is liable to imprisonment for fourteen years.”

³¹ Gutt Macher, “Abortion in Nigeria”, Guttmacher Institute, (October, 2015): 1.

³² Criminal Code Act (1916) Cap. (C38) Laws of the Federation of Nigeria 2004, §§ 228-230, 297, 328. The Criminal Code Act does not apply throughout Nigeria except with respect to federal offenses, that is, offenses relating to matters on the Exclusive Legislative List of the Constitution. This is because crime is generally a residual matter reserved for states. Individual states have their Criminal Codes, but the provisions are similar to the Criminal Code Act.

³³ Penal Code Act (1960) Cap. (532) Laws of the Federal Capital Territory of Nigeria 2007, §§ 232-236. The Penal Code Act, although a federal legislation, does not apply throughout Nigeria, but only in the Federal Capital Territory (except for Federal Penal Code offenses contained in the Penal Code (Northern States) Federal Provisions Act, Cap. (P3) Laws of the Federation of Nigeria 2004). This is because crime is not on the Exclusive or Concurrent Legislative List of the Constitution. The Penal Code applies in states that have not adopted the Sharia Legal System or to non Moslems in states that have adopted the Sharia Legal System in the North. Individual states have their Penal Codes but the provisions are similar.

The Penal Code

1. Section 232 – Causing a Woman to Miscarry

“Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.”

The combined effect of Sections 228, 229, and 230 of the Criminal Code is to the effect that any woman who, with intent to procure her own miscarriage unlawfully administers to herself any poison or other noxious thing or any person who assists her in doing the same is liable to imprisonment for a period ranging from three to fourteen years.³⁴ In like vein, Section 232 of the Penal Code provides, “Whoever causes a woman with child to miscarry shall, if the miscarriage is not caused in good faith for the purpose of saving the life of the woman, be punished with a term of imprisonment which may extend to fourteen years or with fine or both.”³⁵

Concurrent Situation of Abortion in Nigeria

Throughout history, the criminalization of abortion had forced women in all jurisdictions to embrace unreliable and dangerous means of eliminating unwanted pregnancies. They took pills and portions of certain drugs, many of which were poisonous and caused extreme irritation to the stomach and bowel; some tried to carry out their own abortion using crochet hooks, knitting needles, soap or lead solutions through syringes; hot baths, blows to the back and kicks or heavy pressure on the abdomen were also ways of trying to cause abortion. Everything was tried except qualified personnel and descent hospitals.³⁶

Except for the methods of self-help employed, which is more modernized, the story is largely the same in Nigeria today as a result of the continued criminalization of abortion. Pregnant women who desire abortion go to any length (except government hospitals) to get it albeit, at great risk to their reproductive health. In short, the law is a deed letter law observed more in breach than compliance as it fails to recognize the social, cultural, psychological and even medical factors that are responsible for women seeking abortion. Women procure abortion for several reasons including financial and emotional inability to care for a baby; fear of rejection by partners, parents, peer groups, religious and community leaders and society if the pregnancy is discovered; as means of birth control; physical and mental reasons; if they are too

³⁴ Criminal Code Act, Chapter 77 of the Laws of the Federation of Nigeria (Revised ed. 1990), Articles 228-230, 297, 309, 328.

³⁵ Penal Code Act, Laws of the Federation of Nigeria Cap 39

³⁶ Okorie, P. Chibueze and Abayomi, Olubusola Adebayo "Abortion Laws in Nigeria: A Case for Reform," Annual Survey of International & Comparative Law: Vol. 23 (2019): Iss. 1, Article 7, 187.

young or too sick to have a baby; desire to get rid of unwanted pregnancies arising from several reasons including rape or failure of contraception etc.³⁷

Reform Of Abortion Law In Nigeria In The Light Of Kant's Categorical Imperative

The above paragraph explicates the effect of abortion law in Nigeria. It points out that why there has been cases of abortion in Nigeria is because of its provision in criminal code and penal code as criminal offense. A moral law is a rule for guiding behavior and Kant made a distinction of these moral law which are hypothetical and categorical command or imperative. As against hypothetical imperative, Kant explains that categorical imperative is the genuine moral command. It tells us what we ought, should, or must do, but it does not depend on any prior conditions, or subjective wants and wishes, and it contains no qualifications. It takes the form “Do X!”³⁸ It is not preceded by any 'if clause' for it tells us what we are morally commanded to do under all conditions and at all times. For him, that moral law comes from rational rule which is universal and consistent. It is universal in that it is a rule that applies to all people, at all times, and in all circumstances. It is consistent in that it does not lead to any contradictions.

In the abortion law in Nigeria, especially the sections 228 and 232 of the criminal code and penal code respectively, there is a contradiction. The section 228 of the criminal code followed the categorical command of Kant which states what one ought to do, should do or must do regarding abortion but the section 232 of the penal code followed the hypothetical command by using the clause “if” thereby contradicting itself. To reform the abortion law in Nigeria using categorical imperative, there are two things that are at stake, (i) to salvage the incessant abortion created by abortion law in Nigeria and (ii) to redress the contradiction found in the abortion law in Nigeria.

Hence, in doing these two things mentioned above, the application of the first version of Kant's moral principle which states that if one wants to act, he/she should act according to the rules which can be universally applied to all people at the same time. This implies that if abortion law in Nigeria should redress the complications contained in it and the effect it has caused; it has to do this in way that any maxims guiding people's action regarding abortion should be a universal law.

In the light of Kant's second version of moral principle which has been mentioned above, the question of abortion in Nigeria can be corrected. For him, if an action must be a moral right, it must act in such a manner that it treats oneself or another as an end

³⁷ Ibid.

³⁸ Op. Cit, 373.

but not as a means to an end. An end is simply a goal which someone intends to achieve in a given action. For instance, if someone wants to win a football competition and decides to injure his opponent in order to weak him so as to achieve the desired goal, it becomes a moral wrong. For Kant, “things are to be used but people are to be loved”,³⁹ not the other way round. In Nigeria, research showed that people commit abortion for several reasons without putting into consideration the unborn child. Some procure abortion just to preserve their so called 'personal image' which he/she has built for years. Kant posit that “each person has an intrinsic worth and dignity”. Hence the question is, when has the unborn child attain the status of a person? This is the question which is the focal point of the two divide known as pro-life and pro-choice. Where the pro-life claims that the unborn child has attain the status of a person and thus his/her life and dignity is to be respected, the pro-choice objects that unborn child has not attained the status of a person. This implies that anyone should be at will if he/she wishes to terminate the life of an unborn child. Therefore, the question as to when can a fetus be called a person becomes controversial in the issue of abortion.

Furthermore, the question of abortion in Nigeria could also be redressed in the light of Kant's third version of moral principle. It is also called “principle of autonomy”⁴⁰ which has freedom of the will as its centrality. It emphasizes the predominant role of reason in humans in making moral judgment as a moral agent. For Kant, a moral decision that was made out of any external authority or our own inclination does not proceed from reason. From the above reasons why some Nigerians procure abortion, it is obvious that the moral decision for abortion proceeded from personal inclination e.g., for self-preservation and external authority e.g., for fear of be convicted as a criminal offender. This is to say that in treating any issues regard termination of human life such as abortion, the role of reason in making moral decision, judgment and law is very paramount. There is a connection between the three versions of Kant's moral principle since the role of human reason will enable him to see a fellow human as an end not as a means to an end and also will enable him in making a universal law.

Evaluation/Conclusion

A sense of duty is inseparable with humanity, for to be a moral and even free being, you ought to be duty-bound or at least, conscious of duty. For man to be duty conscious, then, it entails certain forces of law. Hence, man is bound by the moral will to determine his function towards his end. Kant asked, if the morally good will is one that performs actions out of a sense of duty and duty is conformity to the moral

³⁹ Ibid.

⁴⁰ Ibid, 374.

law, then how do I determine what is the moral law? In determining the moral law, Kant gave what should be a moral law as that axioms which tells us what we ought, should, or must do, but it does not depend on any prior conditions, or subjective wants and wishes, and it contains no qualifications. It is in this regard that this work critically, looked at the moral law bounding the issues of abortion in Nigeria and attempted to redress the inconsistency that is contained in the law perhaps it could be universally applied to all people. The criminalization of abortion had forced women in all jurisdictions to embrace unreliable and dangerous means of eliminating unwanted pregnancies.

Life is sacred and is worth protecting. It has become abominable act in Nigeria how life is lost through abortion in everyday life. Women procure abortion for several reasons including financial and emotional inability to care for a baby; fear of rejection by partners, parents, peer groups, religious and community leaders and society if the pregnancy is discovered; as means of birth control; physical and mental reasons; if they are too young or too sick to have a baby; desire to get rid of unwanted pregnancies arising from several reasons including rape or failure of contraception. In my own opinion, I think the application of first version of Kant's moral principle to the complications of the abortion law in Nigeria is inconsiderable. This is because some situation that would warrant abortion are relative.

However, this work maintains that in order to redress the issue of abortion in Nigeria, it is pertinent to appeal to the second and third version of Kant's moral principle where the dignity of unborn baby as human person is respect and valued, and where the role of reason is preeminent in making moral decision. Thus, there is a connection between the three versions of Kant's moral principle since the role of human reason will enable him to see a fellow human as an end not as a means to an end and also will enable him in making a universal law.

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