

Abortion and human rights in the outlook of international laws

Mehrgan A. H. (L.L.M.)

- Doctoral Fellow in International Law, Department of Science and Research, Azad Islamic University, Tehran, Iran.

Abstract

Studying abortion from Human Rights views and making a statement about its legality or illegality, requires us to know that human rights is a part of International Law, which is based on the will of states as the members of international community, and it is materialized in international conventions and customs. International Law is a main branch of science of Law which is a tool in the hands of the civilized man to draw the different wills closer and to enact punishment for breaching the rules pertaining to Public Order. In the contemporary era, human rights which is inclined towards the inherent values of human beings and is outside the reach of the will of states and accordingly should be just codified and respected by governments, and in this respect can not be granted or even waived, with regard to the rapid changes in the international community, already is under such a great attention that has affected Law in its whole concept. The main issue in all international human rights instruments is human being and the intrinsic rights belonging to his nature, accordingly it can be deduced that humanity as a whole, is the real concern in human rights. Notwithstanding, the most fundamental right of human beings through which enjoyment of other rights is possible, is the Right to Life which is considered by all the relevant instruments. Different human rights are not based on hierarchy but each of them is complimentary or supplementary to the others, therefore submitting to this right without considering and respecting the other human rights i.e. freedom of choice, actually would end up in negating the intrinsic values of mankind which has been created by God in his figure. Abortion is a complicated issue and necessitates considering the contradicting rights inherent in human nature namely: the right of fetus, which according to medical and biological sciences bears human DNA and therefore should be considered a human being, the right to life and the right of women to choose the walks of life they choose, especially when one chooses the kind of motherhood she wishes during her life. The reason why most international human rights instruments do not carefully address this important problem is rooted in the mentioned conflicts which in a broad analysis have a restricting effect on the rights of the two parties. The black and white theories of those who approve or criticize abortion, which is based on pure metaphysics or humanism, to the benefit of either the unborn child or the mother, can not help to elucidate this problem because the mentioned inconsistency is not entrenched to the theoretical debates but is considered as the exact starting point of encountering reality and law in a particular aspect of social life. Although in our views, there is no uncertainty about the human characteristics of the fetus, hence about his right to life, we have to remember that the nature of human beings consists of opposing and at the same time evolutionary elements, therefore human rights can not be studied devoid of consideration of all conflicting problems and developing issues concerning this complex nature with its earthly needs. If no steps are taken to comply with the minimum standards in the mankind's life, he, as a result of distress or as seeking a solution to his problems, without contemplating about ethics and values, may infringe the rights of others, including his own child's.

Key Words: International law, Abortion, Human rights, Humanity, Right to life.

Corresponding Author: Mehrgan Amir Hossein., No. 75, The International Committee of Red Cross, Eastern Taban St., Between Mirdamad and Zafar Sts., Africa St., Tehran, Iran.

E-mail: a_mehrgan@yahoo.com