ABORTION

By V. Kumar*

The purpose of this paper is to examine in general terms the law of Singapore and England relevant to the subject of abortion. For the sake of comparison the relevant laws of Sweden, Denmark, Finland and Japan, where abortion is legal, are also discussed.

In analysing this problem, the first question one should examine is the extent to which the statutory provisions in England and Singapore recognize therapeutic abortions. As the law stands therapeutic abortion is not permitted on mental health, economic, social, eugenic or ethical grounds. Therefore even when the health of the mother is threatened by the continuance of her pregnancy and even when the life of the woman could be saved by an operation and even when the operation is performed by a qualified doctor in a recognized hospital it would appear that the doctor who performs such an abortion would be committing an illegal act. This is because under the present law an abortion can be performed only when the life of the mother is in danger.

Before we examine the law relevant to abortion, the terms abortion, miscarriage and premature labour must be clarified, as these terms are generally misunderstood.

The Singapore Penal Code does not define either miscarriage or abortion. Legally both miscarriage and abortion mean the pre-mature expulsion of the contents of the uterus at any period before the full term of nine months is reached. Medically, however, three distinct terms are used to denote the expulsion of the contents of the uterus at different stages of gestation; these are abortion, miscarriage, and premature labour.

The term, abortion, is used to define the termination of the pregnancy prior to the twenty-first week of pregnancy. Cognizance is taken of the fact that, medically, viability is not attained until the twenty-eighth week and termination of pregnancy up to this period is sometimes referred to as an abortion. Generally a natural abortion[1] is more likely to occur in the earlier months of the pregnancy, and it appears to occur more readily at the period corresponding to those of the menstrual discharge.

Natural abortion can be induced by numerous causes; malformations of the pelvis, accidental injuries and various other morbid conditions can lead to the death of the foetus. Also, if certain diseases arise in the course of pregnancy they act as direct exciting causes of abortion, particularly eruptive fevers and acute inflammatory infections. In many other cases abortion occurs without apparent cause; such cases are generally due to the presence of morbid conditions of the interior of the uterus.[2] The term miscarriage is used to denote the expulsion of the foetus between the fourth month to the seventh month of gestation, before it is viable; while pre-mature labour is the delivery of a viable child, possibly capable of being reared, before it has become mature.

THE SINGAPORE LAW

The essential terms being clarified, the law itself may now be examined. The law relating to abortion is contained in sec. 312-316 of the Singapore Penal Code:

Sec. 312. 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 three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation. — A woman who causes herself to miscarry is within the meaning of this section.

Sec. 313. Whoever commits the offence defined in section 312, without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment for a term

* BA., LL. M. (London) of Lincoln's Inn, Barrister-at-Law, Faculty of Law, University of Singapore.

which may extend to ten years, and shall also be liable to fine.

Sec. 314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.

Explanation. — It is not essential to this offence that the offender should know that the act is likely to cause death.

Sec. 315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to ten years, or with fine, or with both.

Sec. 316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Sec. 312 as has been seen divides the crime of abortion in two classes:

(a) when a woman is 'with child';

(b) when a woman is 'quick with child'.

A woman is with child within the meaning of this section as soon as she has conceived. It is not necessary to show that quickening i.e. perception by the mother of the movements of the foetus has taken place or that the embryo has assumed a foetal form.[3]

Quickening is the name applied to the peculiar sensations experienced by the woman between the sixteenth and twenty-second week of pregnancy. These symptoms are ascribed usually when the woman first perceives the movements of the foetus, which usually occurs when the womb begins to rise out of the pelvis or to a change of position in the womb.[4] 'With quick child' is when the child has quickened i.e. when the woman has felt that the child moves within her.[5]

There can be no doubt that the term 'with child' means pregnant and the stage to which pregnancy has advanced is immaterial under the first part of sec. 312 while the term "quick with child" refers to the time when the woman first feels the movements of the child within her and not to any previous time after conception, otherwise effect could not be given to both the terms "with child" and "quick with child". It should be further noted that a person who causes a woman to miscarry when she is only "with child" is not liable to the same degree of punishment as one who causes miscarriage when she is "quick with child".[6] Sec. 312 penalizes only violent or forced abortions which are not performed in good faith[7] for the purposes of saving the life of the mother. Moreover under sec. 312 & 313, evidence must be given to show that the defendant actually did some act or used some drug to cause the expulsion of the contents of the uterus to bring about the miscarriage. Under this section any person abetting the abortion as well as the woman who causes herself to miscarry are both punishable.[8]

Sec. 313 Singapore Penal Code relates to the offence of abortion committed without the consent[9] of the woman. This naturally aggravates the crime and justifies the imposition of a heavier penalty as provided under this section.[10] Under this section the abortionist alone is punished and the degree of criminality does not vary with the stage of pregnancy as in sec. 312.

In similar circumstances the offence under English Law would amount to murder while under this section the maximum penalty which can be imposed is imprisonment for life.[11]

Sec. 314 Singapore Penal Code comes in operation where death has occurred in causing miscarriage. Under this section it is not essential that the offender should know that the act is likely to cause death.[12] Thus where poisonous drug was administered to a woman with intent to procure abortion and death resulted, the accused was held guilty and the Court pointed out that it is not necessary to prove that the accused actually knew the drug was likely to cause death.[13] This section apparently conforms to the general rule governing criminal liability, i.e. every man intends the natural consequences of his act. This section accordingly holds the accused responsible for the natural consequences of his illegal act and he is liable even when he acts with caution in order to prevent risk to her life. This is because a person cannot violate the law and at the same time seek its protection against its natural consequences, for the offence consists 'in doing an act with intent to cause miscarriage.'[14]

The position in England is substantially the same. Sec. 58 of the Offences against the Persons Act speaks of "administering or causing to be taken any poison or other noxious thing". A "noxious thing", within the meaning of the statute means a thing that will produce the effect mentioned in the statute i.e. miscarriage.[15] In an English case, where the accused was indicted for administering saffron to a woman with intent to procure abortion the question arose as to whether the thing administered was in fact "noxious". Vaughan B. held that an answer to this question is immaterial. "It is with intention that the jury have to do, and, if the prisoner administered a bit of bread with intent to procure abortion it is sufficient to constitute the offence contemplated by the Act of Parliament."[16]

The other relevant provisions relating to the offence of abortion are sec. 315 & 316. Sec. 315 is mainly directed against child destruction and punishes for injuries caused to child life which may or may not be fully developed. However, no person can be found guilty unless it is proved that the act which caused the death of the child was not done in good faith[17] for the purpose of saving the life of the mother. This section punishes the offence of 'foeticide'. The difference between foeticide and infanticide is that the former offence is committed while the child is still in the womb of the mother. While in the later case, the offence can only be committed after the child has been delivered and has an independent existence.

The provisions of this section are similar to the Infant Life (Preservation) Act 1929 which provides that *"any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of the mother, shall be guilty of child destruction provided that the act which caused the death of the child was not done in good faith and for the purpose only of preserving the life of the mother"*. For the purpose of this Act, a child is capable of being born alive when the woman has been pregnant for a period of twenty-eight weeks or more.[18]

In R. v. Lumley[19] it was held that when an abortionist feloniously uses an instrument, or other means, with intent to procure the miscarriage of the woman, and the woman dies in consequences of the felonious act, and, if, when he did the act, he as a responsible man contemplated that death or grievous bodily harm was likely to result, then he would be guilty of murder. However if he could not, as a reasonable man, have comtemplated either of these consequences, he is guilty only of manslaughter.[20]

The last sec. 316 Singapore Penal Code lays down the punishment for the offence of causing the death of a child that has not yet become a human being. It provides that, if the act results in the death of the pregnant woman, the accused would be guilty of the offence of culpable homicide amounting to murder. Also, he would be so guilty where the woman does not die and is only injured, but the death of the 'unborn quick child' is thereby caused, provided the act otherwise possesses all the elements necessary to constitute the offence of culpable homicide amounting to murder.[21]

It does not appear that the general procedures whereby a legal abortion is usually procured fall within the scope of this section e.g. embryotomy, hystertomy, crevical dilation and curettage, or the intrauterine injection of the fluid. This is because such acts do not possess all the elements necessary to constitute the offence of culpable homicide.[22] Thus

where a doctor acting in 'good faith to preserve the life of the mother' caused the death of an unborn child by any of the above mentioned procedures he would not be punished under sec. 316.[23] But a similar argument will not apply where the abortion is self induced or to the variety of procedures which the criminal abortionist usually employs e.g. purgatives like quinnine and other ergot preparations, including foreign substances, catheters, bougies, and intrautenne pastes which are commonly introduced into the uterus or douches, too, containing lysol and potassium permanganate solution which are frequently employed.[24] Clearly in such cases the abortion is procured neither in good faith nor for the purposes of saving the life of the mother.

THE ENGLISH LAW

The relevant Law of England is contained in sec. 58 and 59 of the Offences Against the Person Act, 1861, and sec. 1 of the Infant Life (preservation) Act 1929 which I have already discussed in the preceding paragraphs.

Sec. 58: "Every woman, being with child, who, with intent to procure her own miscarriage shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life."

Sec. 59: "Whoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of misdemeanour, and being convicted thereof shall be liable to be kept in penal servitude."

In comparing sec. 58 of the Offences against the Persons Act (1861) and sec. 312 of the Singapore Penal Code one notices that sec. 58 makes reference only to 'woman with child' Consequently it follows that under sec. 58 it would be sufficient to prove that the woman was pregnant, and the stage to which the pregnancy has advanced is immaterial.

Further sec. 58 like its comparable Singapore Penal Code sec. 312 does not make any specific provisions in favour of therapeutic abortion apart from those which are performed in good faith for the purpose of saving the life of the mother. Finally sec. 58 unlike its comparable Singapore enactment sec. 312 contains the qualifying word 'unlawfully'.

The word 'unlawfully' is an important and not a meaningless term. "I think it imparts the meaning expressed by the proviso in sec. 1 sub-sec. (i) of the Infant Life Preservation Act 1929, and therefore sec. 58 of the Offences Against the Persons Act, (1860), must be read as if the words making it an offence to "use an instrument with intent to procure a miscarriage" were qualified by a similar provisio."[25] It follows therefore that the word 'unlawfully' excludes from the section an act of abortion performed in good faith for the purpose of 'saving the life of the mother'.[26]

As both sections of the Offences Against the Person Act use the word 'unlawfully' without any definition to its meaning, and as the statute nowhere defines a 'lawful' emptying of the uterus, it is important for a doctor who decides to perform the operation of abortion to remember the provisions of the Infant Life Preservation Act, 1929, when deciding to empty the contents of a pregnant uterus.[27] It is obvious moreover that the defence would not be available to a professional abortionist.[28]

R. v. Bourne.[29] One of the most important cases decided on the law relating to abortion is the Bourne Case. As this case is of particular importance to the subject I intend to discuss it in detail.

The defendant Mr. Aleck William Bourne, obstetrical surgeon at St. Mary's Hospital was indicted for using an instrument with intent to procure the miscarriage of a certain girl, contrary to the provisions of sec. 58 of the Offences Against the Persons Act, 1861.

It appeared from the facts of the case that the girl, who was then under the age of fifteen, had been raped with great violence in circum-

stances which would have been most terrifying to any woman, let alone a child of fifteen, by a man who was in due course convicted of the crime. In consequences of the rape the girl became pregnant. Her case was brought to the notice of the defendant, who after, a careful examination of the girl, openly, in one of the London Hospitals, without fee performed the operation of abortion with the consent of the parents.

The defence put forward was that, in the circumstances of the case the operation was not unlawful. The defendant stated that, after he had made a careful examination of the girl and had informed himself of all the relevant facts of the case, he had come to the conclusion that it was his duty to perform the operation. Further, the defendant pointed out that he had satisfied himself that the girl was in fact raped and in consequences of the rape had become pregnant. He had also satisfied himself that she had not been infected with venereal disease, since in that case there would have been a risk that the operation would cause a spread of the disease. Nor would he have performed the operation if he had found that the girl was either feeble-minded or had what he called a prostitute mind, since in such cases pregnancy and child birth would not be likely to affect a girl injuriously. He satisfied himself that she was a normal girl in every respect and that in his opinion the continuance of the pregnancy would probably cause serious injury to the girl, injury so as to justify the removal of the pregnancy at a time when the operation could be performed without any risk to the girl and under favourable conditions. Evidence was also given by a specialist in medical psychology to the effect that if the girl gave birth to a child, the consequences was likely to be that she would become a mental wreck.

Macnaghten J. in summing up the case to the jury said: -

"The defendant is charged with an offence against sec. 58 of the Offences Against the Persons Act, 1861. That section is a re-enactment of the earlier statutes, the first of which was passed at the beginning of the last century in the reign of George III (43, Ge. 3, C. 58. s. 1). But long before then, before Parliament came into existence, the killing of an unborn child was by the common law of England a grave crime: see Bracton, Book III (De Corona), fo 1121. The protection which the common law afforded to human life extended to unborn child in the womb of its mother. But, as in the case of homicide, so also in the case where an unborn child is killed there may be a justification for the act."[30]

Macnaghten J. continued and pointed out that the words —

"for perserving the life of the mother" ought to be interpreted in a reasonable manner. "It is not contended that those words mean merely for the purpose of saving the mother from instant death. There are cases we are told, where it is reasonably certain that a pregnant woman will not be able to deliver the child which is in her womb and survive. In such cases where the doctor anticipates, basing his opinion upon the experience of the profession, that the child cannot be delivered without the death of the mother, it is obvious that the sooner the operation is performed the better. The law does not require the doctor to wait until the unfortunate woman is in peril of immediate death. In such case he is not only entitled, but it is his duty to perform the operation with a view to saving her life ..... As I have said, I think those words ought to be construed in a reasonable sense, and if the doctor is of the opinion, on a reasonable ground and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor who, under these circumstances and in the honest belief is operating for the purpose of preserving the life of the mother ....."[31] Then too, you must consider the evidence about the effect of the rape, especially on a child, as the girl was ..... to carry in her body the reminder of the dreadful scene and then go through the pangs of the child birth must suffer great mental anguish ....."[32]

Other main points relevant to the problem under discussion are as follows: -

(1) The mere fact that a woman desires abortion is by itself not a sufficient justification in law. Consequently, it follows that a doctor who performs an abortion on that

account alone and when the life of the mother is not in any danger, would be committing an illegal act.

(2) Would a doctor be guilty of criminal negligence if he refuses to perform an abortion because of his religious conviction? A doctor who holds such an opinion has no right to be an obstetrical surgeon, for if a case arose where due to the continuance of the pregnancy, the life of the woman is in danger and could be saved by performing the operation and the doctor refused to perform it because of his religious opinion and the woman died, he would be in a grave peril of being brought to the Court on a charge of manslaughter. "He would have no better defence than a person who, again for some religious reason, refused to call in a doctor to attend his sick child, where a doctor could have been called in and the life of the child could have been saved. If the father, for a so called religious reason refused to call in a doctor, he also is answerable to the criminal law for the death of his child."[33] Dr. Glanville William points out that it is a serious rule for the Roman Catholic practitioner, whose religion apparently forbids him to perform the operation in any circumstances.[34] It is also clear that the authority to perform the abortion is not available to a criminal abortionist who performs the operation without any medical qualification or skill. It is available only to the medical profession as they alone are qualified to perform such an operation.

Further, as a safeguard it would be advisable that the doctor who undertakes to perform the operation should do so only after consultation with some members of the medical profession preferably of a high standing. Dr. Taylor, in this respect points out that the termination of a pregnancy by artificial means is a serious undertaking. It must never be undertaken without the most serious consideration of necessity and preferably never without at least one confirmatory opinion from a respected source.[35] In the U.S.A. besides the opinion of the physician in charge, two consultants must agree that therapeutic abortion is essential before it can be performed. In some states therapeutic abortion cases are reviewed by and receive the sanction of a staff committee composed of a representative from the Department of Medical Surgery, Neuropsychiatry, Pediatrics and Gynaecology and Obstretrics along with the patient's physician who is expected to present a report on the case.[36]

(3) Is a doctor required to report to the police cases of illegal abortion performed prior to admission or would the reporting of such cases be a violation of professional secrecy?

The Royal College of Physicians in England has expressed the following rules for the guidance of the medical profession on this question.

A. A moral obligation rests upon every medical practitioner to respect the confidence of his patients and that without her consent he is not justified in disclosing information obtained in the course of his medical attendance on her.

B. Every medical practitioner who is convinced that criminal abortion has been practised on his patient should urge her, especially when she is likely to die, to make a statement which may be taken as evidence against the person who has performed the abortion, provided always that her chances of recovery are not thereby prejudiced.

C. In the event of her refusal to make such a statement, he is under no legal obligation (so the College has advised) to take further action, but he should continue to attend the patient to the best of his ability.

D. Before taking any action which may lead to legal proceedings, a medical practitioner will be wise to obtain the best medical and legal advice available, both to ensure that the patient's statement may have value as legal evidence, and to safeguard his own interest, since in the present state of law there is no certainty that he will be protected against subsequent litigation.

E. If the patient should die, he should refuse to give a certificate of the cause of death, and should communicate with the coroner.

The College has been advised to the following effect: -

A. The medical practitioner is under no legal obligation either to urge the patient to make a statement, or if she refuses to do so, to take any further action.

B. When a patient who is dangerously ill consents to give evidence, her statement may be taken in one of the following ways:

(i) A magistrate may visit her to receive her deposition on oath or affirmation. Even if criminal proceedings have not been instituted, her deposition will be admissible in evidence in the event of her death, provided that reasonable written notice of the intention to take her statement was served on the accused person and he or his legal adviser had full opportunity of cross-examining.

(ii) If the patient has an unqualified belief that she will shortly die, and only in these circumstances, will her dying declaration be admissible. Such a declaration may be made to a medical practitioner, or to any other person. It need not be in writing, and if reduced into writing it need not be signed by the patient nor witnessed by any other person, though it is desirable that both should be done or that, if the patient is unable to sign, she should make her mark. If possible, the declaration should be in the actual words of the patient, and if questions are put, the questions and answers should both be given, but this is not essential. If the declaration cannot there and then be reduced into writing, it is desirable that the person to whom it is made should make a complete note of it as soon as possible.

Dr. Taylor however points out that these resolutions must not be confused with the law of England, but they may be taken as representing an attitude which, if adopted by a medical man would certainly absolve him from any censure and would probably gain for him the full support both of his profession and of any medical protection society.[37]

(4) To what extent does mental health, economic, social, eugenic or ethical grounds provide a basis for termination of pregnancy in Singapore and England?

The laws of England and Singapore do not specifically recognize any interference with pregnancy on any of these grounds. As the law stands at the present time, pregnancy can be terminated only for the "purpose of saving the life of the mother". In can be argued, however, that the decision in the Bourne Case has established a precedent in stating that where there is likelihood of "serious injury to the mother and a practical certainty that she would become a physical and mental wreck", it will afford an excuse and the Court will not look too strictly into the question of danger to life. Since life depends upon health, it may be that health is so gravely impaired that death results.[38] But whether the acquittal of Mr. Bourne amounts actually to a legal justification for therapeutic abortion in England remains a matter of doubt as well as a speculation. This is because there is no clear distinction between danger to life and danger to health. Moreover there is as yet no judicial guidance on the question of whether the quality of life is regarded under the statutes as referring merely to the preservation of the life of the mother.[39]

A similar argument will also apply to patients who have taken terotogenic drugs such as thalidomide. In recent months several reports appeared in European literature linking a number of major congenital malformations to the taking of thalidomide drug. These reports have indicated that the thalidomide drug taken by the mother during the early months of pregnancy caused in a number of cases phocomelia (absence or deformity of arms and legs). It has been estimated that in West Germany alone 2,000 – 3,000 infants have been affected by this drug since

1959. Again a significant increase in the frequency of these congenital abnormalities after the introduction of the thalidomide drug was noted by McBride, who reported, for example, that such abnormalities rose from the usual rate of 1.5% to 2% in infants of women who had taken thalidomide during pregnancy. A similar high degree of malformations was observed in other countries e.g. Germany, Australia, Great Britain, Belgium, Sweden and Switzerland.[40]

A difficult problem arises both for the mother who has taken the drugs and for the doctor. What should be done when a woman has taken a harmful drug shortly after she becomes pregnant?

In Singapore as well as in England therapeutic abortions are permitted as said before, only in circumstances when the life of the mother is in danger. If this is the law then an abortion performed merely to avoid the birth of deformed baby when the life of the mother is not in any danger, would be illegal.

It might well be asked what justification the law has to censure the couple which decides to have an abortion, if this decision is taken by the parents and is based upon sufficient medical advice. Dr. Potts, a noted Chicago pediatric surgeon, points out:

"Having for so many years spent much of my time in trying surgically to correct serious congenital defects in the newborn, having witnessed the anguish of the parents confronted with the problem of caring for the malformed child, having seen the burden these children carry into adult life, I can come only to one conclusion. I would advise that the laws be changed to legalize abortion for such specific cases only."

The misfortune of having a child so badly deformed has serious repercussions on the social and psychological life of the parents. It is our moral obligation to avoid such tragedy and it would be an act of kindness to extinguish a deformed foetus and avoid suffering both to the parents as well as to society.[41]

An English text on Medical Jurisprudence points out: None of these conditions constitute a definite and unarguable justification for the termination of a pregnancy, each case has to be weighed carefully and, though the desire of the mother to retain a pregnancy is always naturally to be respected, the desire to be rid of it must, on the contrary, be a matter of critical consideration. Eugenic, social and other reasons have been advanced in justification of therapeutic abortion, but rejected since in general, they do not 'endanger the life of the mother'. The assistance of the psychologists is sometimes sought on grounds of anxiety, depression and threatened suicide during pregnancy, but the law has not yielded to encouragements to adapt itself to modern practices.

Dr. Potts advises that the present law should be changed to legalize abortion for the thalidomide cases only. Before proceeding with the abortion he advises that the parents should have the opinion of three doctors and should also consult their religious leader or close friend.[42]

(5) Would a doctor be indicted on a charge of neglect if he falls to perform a therapeutic abortion when there are reasons for such an action? It would seem that if the life of the mother is not in any imminent danger, he cannot be held guilty of neglect, because if he did perform the operation he would be doing this contrary to statute, i.e. an illegal abortion.[43]

(6) Finally, the burden of proof rests on the Crown to satisfy the jury beyond reasonable doubt that the defendant did not procure the miscarriage of the girl in good faith for the purposes of preserving her life. If the Crown fails to satisfy the jury, the defendant is entitled by the law to a verdict of acquittal.[44]

EXPERIENCE WITH LEGALIZED ABORTION

Most Scandanavian countries have made provisions for therapeutic abortions. In Sweden, according to the Abortion Act 1938 a pregnancy can be terminated on medical,

medical-social, humanitarian and eugenic indications.[45]

Medical indication exists when, on account of illness or physical defect in the woman, the continuance of the pregnancy would entail serious danger to her life and health. Medical-social indication exists where, on account of 'weakness' in the woman, the advent of the child would entail serious danger. This last-mentioned clause refers to 'worn out mothers' and similar cases. Humanitarian indications exists where the woman has become pregnant through a criminal act. e.g. rape or other sexual offences and there has been a violation of her freedom. Eugenic conditions exist when there are reasons to believe that the mother or the father of the expected child would transmit insanity to the unborn child because of mental deficiency or the presence of a serious physical disease. In such cases the termination of pregnancy is usually accompanied by sterilization, unless for special reasons this measure is considered unsuitable. Simultaneous sterilization is considered to be unsuitable in cases where the woman's health is very poor or in those cases where the woman is near her climacteric or where she is a permanent inmate in an institution.[46]

In 1941, a committee was appointed to consider the various problems connected with abortion including the motives for illegal abortions. The committee submitted its report in 1944. In this report is included an account of the pregnancy of illegal abortion in Sweden. Since the coming into force of the 1938 Act, legal abortions increased from 439 in the year 1939 to 703 in the year 1943. This increase was ascribed to abortion on eugenic indications which was previously not permitted. The report of the committee further shows that the new legislation did not change the earlier practice except with regard to abortion on eugenic indications. It was also observed that humanitarian indications occurred only in exceptional cases. During the years 1939-1943 there were 37 such cases, the majority referring to rape or the exploitation of a minor.[47]

The committee further noted that the number of legal abortion recorded due to medical-social indications was surprisingly few. Only 55 cases of legal abortion on this indication were reported during the years the Act had been in force. It has been suggested that the small number of legal abortions on this indication was in part a result of the doctors often recording these cases under the head of purely medical indication.

As it was the aim of the Abortion Act that this category of women should be given greater opportunity to have legal abortion, the provisions of the Abortion Act of 1938 were later amended in 1946. Under the 1946 Act the important amendment was that of 'foreseen weakness'. According to this new clause pregnancy may be terminated where in view of the woman's conditions of life and her circumstances in other respects it may be presumed that her physical and mental health would be seriously impaired by the advent and the care of the child. Weakness in this context commonly meant a psychiatric disability, a neurotic reaction to difficulties.

The motivation for a new-social indication was the experience with the 1938 Act which seems to have shown that there was a need for more precise formulation of the text of the Act and for some extension of the sphere of application of the mixed medical-social indications. The Act further laid down that in considering the question of abortion, the medical view point should be applied in making a decision.[48] It should be noted that in Sweden abortion for purely social reasons is not permitted.[49]

The following table indicates the number of legal abortions in Sweden during the year 1939-1952.[50]

It will be noted from these figures that the number of legal abortions has increased in Sweden since the Abortion Act 1939 came into force. During the first four years the number of legal abortions was constant. But after the amendment of the 1939 Act there was a marked increased in the number of legal abortions. The Committee of Enquiry on abortion of the year 1950 (*Statens offentliga utredningar* 1953, No. 59) reported that 'the indication weakness' has steadily increased in importance, especially after the amendment of the act. In the year 1950 51% of the abortions were granted on this indication. Similarly, the additional indication, foreseen weakness, occurs with increasing frequency.

Of the legal abortions performed in 1950, 10% were granted on this indication. The steady increase of abortions from medical and eugenic indications to the indications weakness and foreseen weakness has been due to greater attention paid to social factors and future health of the woman.

TABLE I

Year	*Number of Legal Abortions*
1939	439
1940	506
1941	496
1942	568
1943	703
1944	1088
1945	1623
1946	2378
1947	3534
1948	4585
1949	5503
1950	5889
1951	6328
1952	6322

Moreover in this connection the psychiatric indications and the mixed psychiatric-social indications for abortion have become increasingly common. Women who are psychasthenic or neurotic, or who have a tendency to reactive psychic insufficiencies and who are living at the limit of their resources are now granted legal abortion more easily. Similarly a severe reactive depression with suicidal tendencies is regarded as an indication for abortion even where the woman is mentally well-balanced.[51]

In spite of the substantial increase in the number of legal abortions in Sweden, it is surprising to note that there has not been a substantial reduction in the number of illegal abortions. Ekbald points out that one reason for this could be due to a large group of women who are now granted legal abortion who would have given birth to the child if this possibility of legal abortion had not been open to them. These woman are to be found chiefly among married women.

Before the Abortion Act these women had taken a new unwelcome pregnancy with resignation accepting it without protest. The Abortion Act now gives possibilities of helping them. Ekbald further points out 'the service implied in a legal abortion is in these cases extremely difficult to judge, but may frequently be of a great value. As it is in this group that the highest pregnancy of recidivations, and the greatest number of new unintentional pregnancies is met with and as it is moreover, by the same man, perhaps the legal abortion should be reserved chiefly for those amongst them who are so worn out that this constitutes an indication for simultaneous sterilization. If the woman herself urgently desires sterilization there is in general nothing to fear that she will regret the measure.'

In this connection the author further points out that reduction in the number of illegal abortions is possible if the facilities for legal abortion could be extended to women who find themselves in a severe conventional conflict in connection with unwelcome pregnancy. This applies especially to women who have been deserted by the male partner. It is mainly through extended indications for legal abortion within this group that a reduction of the number of illegal abortions may be expected. The author further points out that in our present community, these deserted women probably found it very difficult to take care of a child and at the same time keep their psychic health intact, and this in turn has repercussions on their working capacity and on their care of the child.[52] One of the most important conclusions which emerges from Ekbald's instructive report is that legalized abortion is often a useless and futile procedure. This is because a large number of these women who have been granted legal abortion became pregnant again within a short period. The author points out 'it is not uncommon that the legal abortion thus proves only an extremely short-lived and to some extent meaningless help. He therefore advocates, attempting to prevail upon these woman to make regular use of birth control measures and other preventive technique and that this alone can contribute to reducing the number of unwelcome pregnancies. More strongly, he advocates simultaneous sterilization should be carefully considered in every case in which a woman is granted legal abortion, and that a married woman seeking a legal abortion should be

persuaded to allow the pregnancy to go on, on the understanding that she will be sterilized, if another pregnancy is considered undesirable.[53]

Permission for legal abortion is generally given by the Medical Board on application made by the woman. The application is accompanied by a doctor's certificate and a social report.[54] In the larger cities special advice centres have been set up to which any woman can apply to have her abortion case tested. All cases coming before these centres are carefully examined by the medical superintendent, a special gynaecologist, a psychiatrist and specially trained social workers.[55]

The position with regard to therapeutic abortion is much the same in Denmark. The first legislation permitting therapeutic abortion was passed in 1930. Under the 1930 Act, therapeutic abortions were permitted to prevent critical danger to life or health due to disease or in some degree to other conditions of social nature. The judgement of this depends upon: -

(a) present physical and mental illness;
(b) threatening physical or mental illness;
(c) the social circumstances under which the woman has to live.

However, it should be noted that abortion is allowed only in cases where no other proper solution to the problem is possible, such as psychotheraphy.[56]

The administration of the Act is entrusted to medical boards which consist of a specialist in psychiatry, two physicians and one member from a special organization called "mothers help" ('maternity welfare').

The law requires as a condition to interruption of pregnancy that the woman must refer her case to the "mother help" who prepares the case for the board from medical as well as social viewpoint. Members of the board are also required to see all applicants personally. This is to ensure that decisions to terminate the pregnancy are made on a personal basis in each case. The activities of the medical board are coordinated through a central advising standing committee consisting of three persons, two of whom are physicians, one being a specialist in psychiatry and one with practical experience in social affairs.

The working of the law is summarized by Dr. Clemmesen as follows:

"We in Denmark feel that it is important to judge the situation as a whole, in order that not one single symptom should dominate the picture, but that the general social condition of the patient should be considered as well. In psychiatric conditions we take into account not only depressions and suicidal tendencies but also nervous exhaustion and psychasthenia, especially where there are many children."[57]

In Finland provisions for the legal induction of abortion were made in 1950. The law is very much the same as in Sweden and Denmark, but it should be noted that the Finnish law does not recognize purely social indications for the inductions of abortion.

The decision to terminate pregnancy is decided by two specialists, one of whom is actually responsible for inducing it.

A preliminary review of the working of the law has been analyzed by Dr. K. Niemineva and Dr. O. Ylineu in a report which is published in the Finnish Medical Journal, *Duodecim*, now incorporated in the Scandanavian Medical Journal *Nordisk Medicin*. This report deals with the experiences of the Helsingfors Maternity Hospital between 1950 and Dec. 1951 in which a total of 579 legal abortions were induced 141 of which were combined with sterilization. In 82% of the total cases the abortions were induced because of tuberculosis, mental disease, exhaustion and heart disease. Tuberculosis was the indication for abortion in 140 cases. Exhaustion (lassitude, weakness, and *asthenia universalis*) accounted for 102 cases. Unmarried, divorced and widowed women comprised 15.5% of all the cases.[59]

One of the most striking experiments in the use of induced abortion as a technique of family planing is today witnessed in Japan where over one million Japanese women use it annually.[59] Although the first use of abortion in Japan dates back to 700 A.D. provisions for legalized abortion were made in 1948 with the passing of the Eugenic Protection Law of 1948. The object of the Act is declared to

be:- "To prevent an increase of inferior descendants from the stand point of eugenic protection, and to protect the life and health of the mother." In recent years the Act has been amended many times. One of the most important amendments to the 1948 Act was made in 1952 which absolved doctors from the necessity of obtaining in advance permission from the Eugenic Protection Committee for approval for the proposed abortion.[60]

The main provisions of the Eugenic Protection Law 1948 are as follows:

(1) The law legalized sterilization in cases where the life or health of the mother might be endangered by the continuance of the pregnancy or in cases where defective offspring might result.[61] Where the defective person cannot give consent, the Act makes provisions for such consent to be obtained from "the person responsible for the individual" — the spouse, parent or guardian or in the absence of such, the mayor of the town or village.[62] Sterilization can take place either on a voluntary application made by the patient or in some cases could be ordered by the state authorities. There has been a tremendous increase in sterilization operations between 1949 and 1954. Operations performed under the provisions of the Eugenic Protection Law are as follows: [63]

1949	5,752
1950	11.403
1951	16,233
1952	22,424
1953	32,552
1954	38,056

The great majority of the operations were on females. In only about one in forty cases was the subject male. The main reason for operations performed in 1954 was material protection — about 96% of the cases. The remaining 4% were comprised as follows: Hereditary disease — 1%: 333 cases, and leprosy — 122 cases. It should be noted further that sterilization operations are more often performed on rural than urban populations in the ratio of 54.4 to 45.6.[64]

(2) Artificial interruption of pregnancy can take place for reasons of eugenics, or of health of the mother. The operation is also allowed if the woman had conceived under threat of violence, or if when being married she had been forced into extra marital relations against her will. Further amendments to the Act were introduced in 1949. The most important among them provided that in certain cases financial or socio-economic conditions of the couple could be sufficient justification for an abortion.

Since the passing of the law in 1948 the number of legally induced abortions has arisen rapidly. In 1949, there were 2,641,000 such operations. In 1953 the total number of reported legally induced abortions was 1,068,066. In addition to these, one must also take into account an approximately equal number of clandestine abortions. In Dr. Muramatsu's words "It may be safe to say that there are upwards of two million induced abortions in recent years in Japan as a whole and that the number of induced abortions somewhat exceeds that of live births"[65]

Although the main purpose of the Eugenic Protection Law was to protect the health and life of the mother and to prevent an increase of inferior descendants thus insuring healthy offspring, the number having abortion for these reasons has been quite small. A study conducted by Dr. Koya and his associates has shown that out of 1,382 cases among married woman showed that only 17.1% had the operation for health reasons. The reasons most frequently advanced were mainly socio-economic conditions. Dr. Koya points out, that over 80% of the women in this group based their reasons for having an abortion on financial need, child spacing and the desire to limit family size.

One reason which has been advanced for the extensive use of induced abortion is the extremely low cost of such an operation. A study undertaken by the Joban Coal Mine Survey reported that most of the women had the operation performed for as little as 700 yen (less than $2 U.S.).[66] The availability of abortion at such low cost, much cheaper in fact, than a contraceptive appliance, is a matter which has given much concern. The wide use

of abortion on such large scale is also creating the dangers of declining labour force and aging population. "In short the Japanese experiment with legalized abortion has left unsolved some basic problems, while adding new ones in the form of personal and social disorganization."[67]

CONCLUSIONS AND RECOMMENDATIONS

The law relevant to abortion in Singapore and England has been examined along with legislative provisions for legalized abortion in Sweden, Denmark, Finland and Japan.

From the examination of the statutory provisions in Singapore and England, it is seen that the legality of therapeutic abortion is vague. Even today there is doubt whether the Bourne Case establishes the legality of therapeutic abortions. Although this case has been universally acclaimed it has nevertheless been subjected to criticism for being too narrow and rigid.

Under the present law, there are no exceptions to the present rule. Doctors in England and Singapore who advise or participate in performing therapeutic abortions for reasons other than preserving the life of the mother commit a criminal act. "It is certain that the doctors if aware of the facts would find such conditions inimicable to the practice of good medicine. The law cannot expect medicine to be practised upon the sufferance of the law rather than with its clear and absolute sanction".[68] Dr. Glanville Williams however is of the view that it would certainly be a grave thing to hold that the operations performed to preserve the health of the mother are illegal, when these operations are performed by the medical profession with beneficial results.

The foregoing analysis would seem to indicate that a change in the law is desirable. By formal legislation or regulations one cannot hope to reduce the number of illegal abortions 'because it cannot be hoped that legislation which restricts the grounds for legal abortion will displace the illegal operator'.[69] What we can do is to prevent the ill-health of the mother and check the rate of mortality and morbidity which very often follows when abortion is induced by illegal means. In this connection it is worthwhile to remember that the experience with legalized abortion in Soviet Russia has shown that if the operation is performed by competent surgeon, with proper surgical precautions, the occurrence of mortality and morbidity can be reduced to a very small number. In short, the purpose of legislation is not to prevent illegal abortion but to avoid the dangers associated with such abortions.[70] At the same time it would be advisable to open advice centres to prevail upon women to make regular use of contraceptives and other effective preventive techniques, and also more opportunities be made available to married woman for sterilization. In England the law prescribes no compulsory sterilization, but there is at present no legal obstacle to the voluntary sterilization of any person who is sane and adult. "Sterilization, in comparison with contraception, offers certain advantages and certain dis-advantages. It does away with the necessity for taking precautions at every act of intercourse, and is therefore preferable where permanent sterility is desirable or desired. On the other hand, it is irrevocable in some cases, and difficult to revoke in all, so that it should only be used in cases where the individual has considered the matter very thoroughly, and decided that permanent sterility is desirable."[71]

The present statutory provisions in Singapore and England are not only vague, but also out of date because they ignore the use of abortion for purposes of health and eugenic reasons. Provisions should therefore be made to extend the *'save life exception'* clause to include cases for preserving the health of the mother if medically advised; this is because it is not always possible for a doctor to ascertain what constitutes danger to health as opposed to impairment of life. At the same time it is equally difficult to rationalize why one should be morally acceptable and the other not when in both cases the abortion is performed for the general welfare of the mother[72]

It might well be asked why statutory provisions should allow a doctor to perform an abortion only in circumstances when the life of the mother is in danger. In the opinion of this writer, the vital question is not whether the life of the mother is in danger but whether there is any medical reason for performing an abortion. If the medical reasons warrant an operation then certainly it should be permitted

by the law because such operations are performed to safeguard the life as well as the health of the mother. Such abortions are justifiable and to the writer's mind there is no reason why these women should be forced to go through the ordeal and anguish of child birth which can endanger not only their life but at the same time have serious repercussions on their mental as well as psychological development. A well known author in this connection, further points out that the State has no right to interfere in the private life of its female citizens and should not prevent them from having a pregnancy interrupted if they so desire. This view is generally based on the principle which has been aptly phrased by Victor Margueritte *'Ton Corps est à toi'*. Many sociologists are also of the view that there are many reasons besides the life and the health of the mother which render the interruption of the pregnancy desirable. "Thus in our society an illegitimate child is itself subjected to many disadvantages, and its birth may mean social or economic ruin to the mother. Even in the case of a married mother, the economic circumstances of the family may make it undesirable that she should have a child. The economic circumstances may not enable her to support it properly. She may already have as many children as she can support and care for. Many married couples can usualy rear three children, but would be quite unable to support six and rear them properly."[73]

If the foregoing analysis is correct then it can also be said that the present statutory provisions are out of date and therefore merit correction. It can also be said that they present serious conflicts to the medical practitioner between the duty to serve the patient and the duty to obey the law. At the same time the grounds on which therapeutic abortion can be performed should be stated in clear terms as is done in countries like Sweden, Denmark, Finland and Japan. The absence of clear statutory provisions represents a serious defect and an impediment to the medical profession.

FOOTNOTES

1. To most persons the term abortion carries the implication of criminal interference but this is not true as some pregnancies are known to terminate without any unnatural interference. Further it is important to remember that there are many kinds of abortion e.g. threatened abortion, inevitable abortion, habitual abortion, complete and incomplete abortion. Reid, Text book of Obstetrics 1962, pp. 230-232.
2. Black's Medical Dictionary p. 588.
3. R. v. Adema, 9 Mad. 369 at p. 370.
4. Taylor, Principles and Practice of Medical Jurisprudence 1957 p. 26.
5. R. v. Wycherley 173 Eng. Rep. 486 at p. 487. Dr. Paris however says "The popular idea of quick or not quick is found in error and he also provides that about the 16th and 18th week after conception, the uterus suddenly ascends from the pelvis into the abdomen, a change which is attended with a very peculiar sensation to the woman and is erroneously called quickening from its having been supposed to arise from the first motions of the foetus, but it is solely attributable to the sudden change in the position of the uterus, nor is there any difference between the aboriginal life of the child and that which it possesses at any period of pregnancy, though there may be alteration of the proof of its existence by the enlargement of its size and the acquisition of greater strength. The feeling of quickening is very different from any that is excited by the subsequent motions of the child, it more closely resembles that which is occasioned by terror or agitation from any other cause, and is often followed by syncope [fainting] or hysteria, We shall indeed cease to be surprised at this effect when we consider that from the uterus thus changing its situation a very considerable pressure is suddenly removed from the iliac vessels, in consequences of which the blood rushes to the lower extremeties, and temporary exhaustion of the vessels of the brain and a general loss of balances in the circulating system are the results. In some women the motion is so obscure as not to occasion any distress and where the ascent of the uterus is gradual it is often not felt. c.f. Paris, Medical Journal Vol. (iii) p. 90 and Vol. (ii) p. 209, Reg. v. Phillips (1838) 8 C. & P. 262.
6. Starling, The Indian Criminal Law 1921 p. 590. Adema 9 Mad. 369 at p. 370.
7. Sec. 52 Singapore Penal Code 'Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.
8. Ratan Lal & Thakore, The Law of Crimes 1961 p. 826.
9. Sec. 90 Singapore Penal Code. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reasons to believe, that the consent was given in consequence of such fear or misconception, or if the consent is given by a person who, from unsoundness of mind or intoxication is unable to understand the nature and consequence of

that to which he gives his consent or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

10. Causing miscarriage, unless caused in good faith for the purpose of saving the life of the woman, is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm"; and the consent of the woman or of her guardian, to the causing of such miscarriage does not justify the act.
11. Under the Indian Penal Code sec. 312 the words "imprisonment of life" were substituted for the words "transportation for life" by Act XXVI of 1955 sec. 117 and Schedule.
12. Sec. 314 Explanation Singapore Penal Code.
13. Kalachand Gope 10 W. R. Cr. 59. c.f. Ratan Lal & Thakore, op. cit. p. 827.
14. Gour, Penal Law of India 1961 p. 1594.
15. R. v. Hollis L.T. 455. It is impossible to lay down any abstract rules as to what is a noxious thing within the meaning of the Offences Against the Persons Act, 1861. The prosecution must show that in the circumstances the "thing" was noxious. It is a substance other than a recognised poison which, in the quantity administered, and the circumstances of the case would be to kill, endanger life, injure, aggrieve or annoy. Taylor. op. cit. pp. 203-204.
16. R. v. Coe 6 C. & P. 403, 172 Eng. Rep. 1295. This decision finds support in R. v. Phillips 3 Camp. 76 where it was held that it was immaterial whether the shrub was savine or not, or whether it was capable of procuring abortion, if the prisoner believed at the time that it would procure it and administered it with that intent. However see also R. v. Issae 32 L.J. 52 M.C. which decided that there must be evidence that the thing administered is noxious within the meaning of 24 & 25 Vict. C. 100 S. 58. "A mere guilty intention is not sufficient to constitute a crime. There must be an intent coupled with an overt act tending to the perpetration of the crime."
17. For the meaning of the term "good faith" see n. 7.
18. Halsbury's Statutes of England, 2nd Ed., Vol. 5. p. 1059.
19. 22 Cox C.C. 635 at p. 636.
20. Ibid.
21. Sec. 316 Explanation Singapore Penal Code.
22. Sec. 299 & 300 Singapore Penal Code define the offence of culpable homicide. Sec. 299. Whoever causes death by doing an act with the intention of causing death, or with intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide. Sec. 300 continues "Except in cases hereinafter excepted culpable homicide is murder:-
    (a) if the act by which the death is caused is done with the intention of causing death, or
    (b) if it is done with the intention of causing such bodily injury as the offender knows to be likeiy to cause the death of the person to whom the harm is caused, or
    (c) if it is done with the intention of causing such bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
    (d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.
23. Lederman, The Doctor, Abortion and the Law (1963) Vol. 6, Canadian Bar Journal, pp. 139-140, (No. 2).
24. Reid, op. cit. pp. 254-255.
25. [1939] 1 K.B. 687 at p. 691.
26. Russel on Crimes 1958 p. 664.
27. Taylor, op. cit. p. 99.
28. [1938] 3 All E.R. 615 at p. 617.
29. [1939] 1 K.B. 687, [1938] 3 All E.R. 615.
30. Lord Ellenborough's Act, 1803 (43 Geo. 3 C. 48) repealed this Act, the preamble to this Act stated that "certain ..... henious offences, committed with Intent to destroy the lives of His Majesty's subjects by Poison, or with Intent to procure the miscarriage of the woman ..... have been frequently committed but no adequate means have been hitherto provided for the Prevention and Punishment of such offences." It enacted that the administration of poison or other noxious and destructive thing with intent to murder, or thereby to cause the miscarriage of the woman "then being quick with child", should amount to a capital offence. It further provided that the administrator of poison etc., or the use of instruments with intent to procure miscarriage "where a woman may not be quick with child should constitute a felony punishable with transportation for fourteen years, as an alternative to imprisonment, the pillory land or a wipping". This legislation puts forward a strong view that abortion was primarily an ecclestical offence. It is of interest to observe that it "recognized the distinction between *embryo formatus* and the *embryo informatus* and its retention of capital punishment for the abortion of the former". DAVIS, The Law of Abortion and Necessity, (1938) 2 Modern Law Review. pp. 134-135.
31. The learned Attorney-General in the course of his cross-examination of Mr. Bourne suggested "there is a clear distinction between danger to life and danger to health." The answer of Mr. Bourne

was 'I cannot agree without qualifying it, I cannot say yes or no I can say there is a large group whose health may be damaged, but whose life almost certainly will not be sacrificed. There is another group at the other end whose life will be definitely in a very great danger. There is also a large body of cases between the two extremes in which it is not really possible to say how far life will be in danger, but we find at the same time that health is depressed to such an extent that life is shortened, such as cardiac cases so that you may say that their life is in danger, because death might occur within a measurable distance of the time of their labour. R. v. Bourne [1939] 1 K.B. 687 at pp. 692, 693.

32. Ibid at p. 694.
33. Ibid at p. 693.
34. (1952) Current Legal Problems p. 132.
35. Taylor, op. cit. pp. 103-104.
36. Reid, op. cit. p. 253.
37. Taylor, op. cit. p. 101.
38. [1939] 1 K.B. 689 at pp. 692, 693 c.f. Davis, op. cit. p. 128.
39. Williams, The Sanctity of life and the Criminal Law 1958 p. 154.
40. (1962) 9, Eugenic Quarterly, pp. 95-97.
41. (1962) 122 Illinois Medical Journal pp. 264-265. See also p. 268 where Rabbi Louis L. Mann points out ..... "failing to prevent such births would be nothing short of sin".
42. Taylor, op. cit. p. 104.
43. Reid, op. cit. p. 254.
44. loc. cit. n. 31, at p. 691.
45. Abortion Act of June 17th, 1938. *(Svenskförfattningssamling 1938, No. 318)*, Sterlization Act of 23rd May 1941 (*Svensk för fattningssamling* 1941, No. 282). Abortion had been prohibited in Sweden since the 13th century. By the Act of 1734 the punishment for abortion was made punishable by death. In the course of 19th century a more human attitude was adopted, which resulted in the mitigation of the penalty. In 1890 the minimum penalty for the woman was reduced from two years to one year of hard labour. These penalties were further reduced by the Act of 1921. Under the Act of 1946, a woman who had submitted to criminal abortion could in certain circumstances be exempted from punishment, provided she could establish extenuating circumstances. Ekbald, Induced Abortion on Psychiatric Grounds 1955, p. 10.
46. Ekbald, op. cit. pp. 15-16.
47. *Statens offentliga utredningar 1944 No. 51.* c.f. Ekbald, op. cit. p. 16.
48. *Svensk författningssamling 1946 No. 201.* c.f. Ekbald, op. cit. pp. 17-18.
49. In 1934, a government committee appointed to consider the law of abortion recommended in its report that social indications in certain circumstances may justify the termination of pregnancy. The committee pointed out that this may arise in cases were the woman's position was so desperate that she could not reasonably be required to go on with the pregnancy or "where the advent of the child might inflict upon the woman lasting misery or distress that it was found could not be otherwise averted". This proposal was somewhat unwelcomed by the public and consequently was not embodied in the 1939 Act. c.f. Ekbald op. cit. pp. 12-13.
50. Ibid, p. 18.
51. Ibid, pp. 17-20.
52. Ibid, pp. 97-98.
53. Ibid, pp. 101-103.
54. Ibid, p. 49.
55. Ibid, p. 25.
56. Since 1930 the number of legal abortions has increased from 500 to 5,000. But at the same time there has been no substantial reduction in the number of illegal abortions. Although it is difficult to estimate the exact number of illegal abortions, it is estimated to be well above 12,000 yearly. (1955-56), 112 American Journal of Psychiatry pp. 662-3.
57. Ibid.
58. (1953) 151, The Journal of the American Medical Association. p. 574.
59. Burch, Induced Abortion in Japan (1955) 2, Eugenic Quarterly, p. 140.
60. Blacker, Japan Population Problem (1956-57), 48 Eugenic Review, p. 35.
61. Article 4, Eugenic Protection Law 1948 — the physician can apply to the Prefectural Eugenic Protection Council to decide whether a person should be sterilized or not because of some thirty physical or mental diseases which are listed in an appendix to the act.
62. Art 12. Eugenic Protection Law 1948. In 1954, 160 persons were sterilized under this provision. Blacker op. cit. p. 36.
63. Blacker, op. cit. p. 35,
64. Ibid. p. 36,

65. Blacker, op. cit. pp. 35-36, Burch, op. cit. pp. 144-145. The Japan Institute of public Health, in what it regards as a modest estimate places the total number of reported and unreported induced abortions for the year 1952-53 as 1,940.000 and 2,330,000.
66. Burch, op. cit. pp. 146-148.
67. Ibid. page 151.
68. Lederman, op. cit. pp. 146-147.
69. Williams, op. cit. p. 219.
70. In England there is no obstacle to the use of measures which aim at preventing conception, nor the sale of apparatus or other preparations for this purpose, nor to the publication of printed matter giving advice on this subject. Haire & Costler 'Encyclopaedia of Sexual Knowledge'. pp. 243-251.
71. Ibid. pp. 287-291.
72. (1956-57) 32 Indiana Law Journal, pp. 204-205.
73. Haire & Costler op. cit. pp. 246-247.