

**ABORTION BAN- AN UNKNOWN CRIME**

-Anushka Misra<sup>1</sup>

**ABSTRACT**

*“When the legislature enacts criminal laws, it cannot ignore that a woman is a human being entitled to dignity and that she must be treated as such, as opposed to a reproductive instrument for the human race. The legislature must not impose the role of procreator on a woman against her will.”<sup>2</sup>*

*Where India is fighting against forced abortion to save the female child, there are few countries which are fighting to get abortion legalized. There are about 26 countries which still do not have any abortion laws and have kept abortion totally illegal, mostly the countries which do so are under-developed but there are countries which are developed and yet has kept a ban in abortion. In this Research Paper, we are going to understand the whole concept through “MALTA” a developed Country in Europe which has still kept abortion illegal and has no abortion laws. This Research paper tries to portray the effects of keeping abortion illegal in Malta, it also challenges the illegality of abortion in Malta in this 21<sup>st</sup> century where everyone has modernized and everyone’s ideology has improved. A comparison is drawn between situation of countries having abortion law (India) and country which do not have abortion law (Malta). It also tries to bring into light the grave injustice and the crime of inhumanity done by the government to the women of Malta in the name of protecting unborn child and not to forget the grave Human Right Violation of the women. The paper tries to empathize with the suffering of the women and tries to open the blindfolds of criminal code and Catholic Church from the eye of Malta’s government officials. It shows the default of the criminal code and outdated thought of the bible. The paper lately concludes and states that abortion law is a necessity and abortion must be legalized.*

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<sup>2</sup>Espinosa Cepeda Jose’, Manuel and David Landau. 2017. Colombian Constitutional Law, Leading Cases. New York: Oxford University Press. <https://books.google.co.in/books?isbn=0190640367>.

**Keyword:** Women, Human Rights, Abortion, Criminal Code, Catholic.

## INTRODUCTION

“Abortion” in reality takes place in every country whether the country has stated it to be illegal or legal. “Banning abortion does not stop the practice; it makes it more dangerous” states journalist George Monbiot.<sup>3</sup> The truth actually is spoken through statistics the ‘Lancet’ journal which states that abortion rates is higher in countries where it is illegal than in those countries where it is legal. In this Global world, where states are held to be welfare states, there exists states which have yet kept abortion illegal, controversies and imprisonment arises in issues of abortion. Their perspective of keeping abortion illegal links back to religious belief and other fundamental human right policy.

The countries who have made abortion illegal states reasons like -there constitution collaborates with Article 3 of the Universal Declaration of Human Rights and protects the Right to Life, Liberty, and security and provides social justice to each and every person of the country say it be an unborn. They also state that all people are equal before law and cannot be restricted on the grounds of race, gender or religion. They state that the abortion laws violate the criminal code of the land and on the other hand violate all the constitutional and human rights law that are put forth in there constitution. They also take shade of the Catholic Church which states that terminating an innocent child no matter for what reason is a sin.

A headline in a journal which read in bold **“El Salvador - where women are jailed for 40 years for the 'crime' of having a miscarriage”**<sup>4</sup> it stated that a women named Maria Teresa Rivera was charged

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<sup>3</sup>MariShibata, “*Banning Abortion Doesn’t actually reduces Abortion rates at all.*” BROADLY, Jan., 15, 2016: [https://broadly.vice.com/en\\_us/article/wnwm8q/banning-abortion-doesnt-actually-reduce-abortion-rates-at-all](https://broadly.vice.com/en_us/article/wnwm8q/banning-abortion-doesnt-actually-reduce-abortion-rates-at-all).

<sup>4</sup>Andrew Buncombe, *El Salvador - where women are jailed for 40 years for the 'crime' of having a miscarriage*, INDEPENDENT, May., 28, 2016, at San Salvador.

for homicide and was given 40 years of imprisonment for her miscarriage. In reality when she was taken to the doctor it was found out that she had induced an abortion but it was totally not her fault

### **SITUATION IN MALTA**

Malta, is a European Island country also known as “**Repubblika ta' Malta**” by the Maltese. It is a catholic country as 60AD in Malta had witnessed the shipwrecking of St. Paul on his way to trial and eventual martyrdom in Rome for which the Archdiocese of Malta is claimed to be an apostolic see<sup>5</sup>. Malta is one of the country which has still kept abortion illegal even in cases where the mother’s life is in risk; Child is in crucial condition; the child itself is illegitimate i.e. born through rape; any natural cause of emotion or wish not to have a child; financial incapability to have a child; improper environment to bring up a child etc. Now there are two approaches to understand why the government has yet kept abortion illegal in the country: i) Criminal Code Approach, ii) Catholic Church Approach.

### **CRIMINAL CODE APPROACH**

The Chapter 9 Criminal Code of the laws of Malta Title VIII (SUBTITLE VII) Article 241 Sub-Section 1 & 2 states “(1) Whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, shall cause the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years; (2) The same punishment shall be awarded against any woman who shall procure her own miscarriage, or who shall have consented to the use of the means by which the miscarriage is procured.”<sup>6</sup>

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<sup>5</sup>MARIO BUHAGIAR, “ST PAUL SHIPWRECK CONTROVERSY: AN ASSESSMENT OF THE SOURCE MATERIAL, ESSAYS ON THE ARCHAEOLOGY AND ANCIENT HISTORY OF THE MALTESE ISLANDS: BRONZE AGE TO BYZANTINE.” 182-183 (Midsea Books, 1997).

<sup>6</sup>The criminal code of Malta, 1854.

Thus, in Malta Abortion is a Criminal Offence and illegal which is punishable with an imprisonment of up to three Years. It states that under no circumstance abortion is possibly. The delegates of Malta thinks that human life starts from conception and thus killing a foetus is actual murder which can be a criminal offence under the criminal code. It is proud of its law which saves the life of unborn child i.e. provides them 'Right to Life' but the irony lays in the fact what about the 'Right to life' of the mother who dies in giving birth to the child. It fails to safeguard the "Right to life" of the mother in order to save the unborn child's right, it also fails to understand the Psychology of the parents, financial condition of the parents or the emotional condition of the women who has been raped. The law does not think about the long term effect or possibility that it can have on the life of the children and the parents. Laws which are based on short term effect, which fail to judge the future i.e. lacks foresee-ability can be denoted as an unhealthy and vague law.

In the 19th meeting of the working group on the Universal Periodic Review on Malta of the UN General Assembly, held on November 1, 2013 Geneva. Minister Helena Dalli, on behalf of the government said "Where the life of a mother (in Malta) was at risk, a medical intervention to save her life, if that could result in the death of the child, was not precluded "but the real practice deferred."<sup>7</sup> This was a false statement which was broken when "The International Commission of Jurists (ICJ) informed the UN in 2013 about Malta's blanket ban on abortion and that there cannot be any doubt that this ban put women at risk of 'torture and cruel, inhuman or degrading treatment'" and is a grave crime against women says, Kurt Waschnig. He also said "There are no medical exceptions to allow abortion in Malta and that shows Malta was also failing to ensure women's right to life."<sup>8</sup>

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<sup>7</sup>Tony Mifsud, *Malta's no to abortion: Malta Unborn Child Movement, Marsascula*, TIMES OF MALT, Aug., 4, 2015.

<sup>8</sup>*Id.* at 6.

The statistics report in “**Abortion statistics for England and Wales, Abortion in Malta**”<sup>9</sup> & “**Historical abortion statistics, Malta**”<sup>10</sup> shows that the reported number of abortions carried out on Maltese residents in the UK in accordance with figures contained in the yearly British Department of Health report. Thus, we can see another irony where the highest number of abortion is being done of the Maltese women in UK. A total of 63 abortions were performed on Maltese women in 2011, according to the UK's National Statistics Office<sup>11</sup>. The highest number of abortions on Maltese women was 78 in 2009, the lowest 36 in 1982. So, we can see that because abortion is illegal in Malta the women fly to UK and get the abortion done which shows the inefficiency of the law. The point starts here that when the government is aware of such great loopholes and inefficacy of law then why not changes it at the first place. The statistics in “**Historical abortion statistics, Malta**” clearly shows that keeping abortion illegal did not stop abortion from happening rather abortion took place illegally as women went abroad for getting abortion. From the statistics we can see that the abortion rate in the country is all over Zero but the abortion done abroad had reached its height in 2007 further we can see how the abortion ratio had decreased but did not stop. Thus, the more you try to catch something tightly the more it will fly off your hand. On the other hand, the states do not want to disturb the Catholic Church and wants to establish a State- Church cooperation so as to get the political support of the church for which they always tries to please the Archbishop.<sup>12</sup> Keeping all the above statements in mind we can see that the women in Malta because of their criminal code are scared of getting pregnant. Being a mother has become a terror for them rather than a happy moment, the women are scared with the

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<sup>9</sup>Department of Health, UK, *Abortion statistics, England and Wales: 2011*. A THE NATIONAL ARCHIVES(July, 292012),<http://www.wikigender.org/wiki/abortion-in-malta>.

<sup>10</sup>Wm. Robert Johnston,*Historical abortion statistics, Malta*, ABORTION STATISTICS AND OTHER DATA--JOHNSTON'S ARCHIVE,last updated 25 March 2018.

<sup>11</sup>Times of Malta, *63 abortions on Maltese women in the UK last year*, TIMES OF MALTA.COM. (May, 29, 2012, 16:39 am)<https://www.timesofmalta.com/articles/view/20120529/local/maltese-women-have-63-abortions-in-the-uk-last-year.421888>.

<sup>12</sup>Gabriel Flores Delgado, “*The woman has to pay her sin-The conditions for a policy change in the abortion legislation in Chile.*” UPPSALA UNIVERSITY DEPARTMENT OF GOVERNMENT BACHELOR THESIS,spring 2016, at 10–11.

possibility of complication in pregnancy or difficulties in the new born. Their hands are tied and the mother Right to life is at stake.

“A Tunisian woman, 30, was given a suspended jail term after she admitted in court to having committed an abortion two weeks ago. She was married to a Maltese man, and was six to seven weeks pregnant and wanted to end her pregnancy. So she asked her friend to procure a cocktail of pills to end it because she had been told that it was going to be a stillbirth. She swallowed some of the pills and ingested others in a bid to end the pregnancy.”<sup>13</sup> (Interestingly, the news report removed an adverb from the last sentence: she had ‘ingested’ that second batch of pills through her vagina.)” This is how worse conditions are in Malta which needs at least some improvement. Even the UN has recommended Point 41 of the Economic and Social Council's report, under the heading "Suggestions and Recommendations", states: "The committee urges the state party to review its legislation on abortion and consider exceptions to the general prohibition of abortion for cases of therapeutic abortions and when the pregnancy is the result of rape or incest." The times of Malta, takes this recommendation as **horrific holocaust the world has ever witnessed** they say that it is a shameless attempt by the UN to bully them.<sup>14</sup>

### **CATHOLIC APPROACH OF ABORTION**

“The inalienable rights of the person must be recognised and respected by civil society and the political authority. These human rights depend neither on single individuals nor on parents; nor do they represent a concession made by the society and the state; they belong to human nature and are inherent in the persons by virtue of the creative act from which the person took his origin. Among such fundamental

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<sup>13</sup>Raphael Vassallo, *Let's discuss about abortion. Oh, no wait*, MALTA TODAY, (Dec., 2, 2014, 7:35 am) [http://www.maltatoday.com.mt/comment/blogs/46965/lets\\_discuss\\_abortion\\_oh\\_no\\_wait#.Wb1j\\_MjHIV](http://www.maltatoday.com.mt/comment/blogs/46965/lets_discuss_abortion_oh_no_wait#.Wb1j_MjHIV).

<sup>14</sup>Paul Vincenti, *Abortion, Malta and the United Nation*, TIMES OF MALTA, Dec., 12, 2004.

rights one should mention in this regard every human being's right to life from the moment of conception until death.” ---**Catechism of the Catholic Church.**<sup>15</sup>

The Catechism of the Catholic Church quotes this from the document of *Donum Vitae* ('the gift of life') from the Vatican Congregation for the Doctrine of the Faith (the department that deals with matters of faith and morals) in the year 1992.<sup>16</sup> Catholic Christian gives certain argument against abortion which includes: Life does not belong to us; it is defined by god and is under his control; Humans are the image of god, thus they are special; Modern day science & Bible affirms the life in womb.

“For you formed my inward parts; you wove me in my mother’s womb. I will give thanks to you, for I am fearfully and wonderfully made; wonderful are your works, and my soul knows it very well. My frame was not hidden from You, when I was made in secret, and skilfully wrought in the depths of the earth; Your eyes have seen my unformed substance; and in Your book were all written the days that were ordained for me, when as yet there was not one of them.” these are lines from **Psalm 139:13-16** which clearly demonstrates the existence of life in womb. Further, in **Didache 2:1** from 150 AD it has been stated that "You shall not procure abortion, nor destroy a new-born child" & Mark Felix, Christian Lawyer, **Octavius chap. 30** from 170 AD states "There are some women among you who by drinking special potions extinguish the life of the future human in their very bowels, thus committing murder before they even give birth." Thus, Christian takes abortion to be a murder.<sup>17</sup>

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<sup>15</sup>BBC, *The Church of England and Roman Catholic Church views on abortion.*” BBC, (Aug., 03, 2009) [http://www.bbc.co.uk/religion/religions/christianity/christianethics/abortion\\_1.shtml](http://www.bbc.co.uk/religion/religions/christianity/christianethics/abortion_1.shtml).

<sup>16</sup>*Id.* at 14.

<sup>17</sup>MD Jhon C &Willke H. Barbara, *the Christian View of Abortion*, ABORTIONFACTS, (Sep., 16, 2017)<http://www.abortionfacts.com/literature/the-christian-view-of-abortion>.

Now talking about Malta in specific, as mentioned previously it is a catholic country. Jurisprudence says that the law of each country is formulated from the customs, traditions, precedents, moral, religion and convention of each country. Thus, we can say that the formulation of Article 241 of the criminal code of Malta is some way or the other based on the moral, ethics or faith on Christianity in the country. The Church plays a vital role in the formation of such law and banning of abortion in Malta. It is the 21<sup>st</sup> century where concept of welfare state, globalization, and internationalization has come into picture. The ideology and mentality of men have upgraded and changed. However, the ideology of the government of Malta and the Catholic Church of Malta has not taken a turn. Malta is led by Archbishop Charles Scicluna, he is described by one commentator in BBC News as “pragmatic rather than fire and brimstone - a bit like Pope Francis”. When he was asked by BBC that shall Abortion be swept away soon from Malta the learned Archbishop replied "We remain committed to defend the most vulnerable and the voiceless in society, such as the unborn child. The Church believes that unborn children too deserve to be treated with dignity, a belief that is also shared by the vast majority of Maltese society."<sup>18</sup>

Thus, we can see how rigid the ideology of the church is and how stagnant it has become. At this verge the only question which arises is– Did god ask anywhere in the Bible or in some Christian Document that a mother has to die for her child? Now the answer to that rhetorical question is yes, He has talked about sacrifices of mother but never did he say that one must die. Next question being, Did he mention anywhere that men’s should Rape women and did god give any further references of what is to be done with the Rape victims and the illegitimate child if born? The **Deuteronomy 22:25–27** specifies the punishment the Mosaic Law required for a man who raped a betrothed woman. The man was to be killed by stoning while the woman was considered innocent. Though the Mosaic Law was for the nation of

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<sup>18</sup> Branford,Becky. 2016. “Malta’s paradox: A beacon of gay rights that bans abortion.” *BBC News*, 8 December 2016. <http://www.bbc.com/news/world-europe-38235264>.

Israel during the time of Moses, the principle is clear that rape is sinful in the eyes of God and, under the Law, led to the most extreme punishment possible—death for the rapist.<sup>19</sup> Even Bible understands the innocence of a rape victim. We can understand that the Church is too deterrent to accept that termination of the foetus for the common good is not immoral. It fails to understand how the ideology of the Catholics save the life of an unborn and unformed and on the other hand takes away the life of another living being. God says that killing is immoral but he has also stated in **Exodus 22:2-3** that “If a thief is found breaking in and is struck so that he dies, there shall be no bloodguilt for him, but if the sun has risen on him, there shall be bloodguilt for him. He shall surely pay. If he has nothing, then he shall be sold for his theft.”

Thus, he has also talked about self-defence and abortion is actually nothing but self-defence in certain cases and the scripture allows self-defence. Through, this concept there is no comparison that is being made between the thief and the unborn but only the concept of self-defence is being justified. The concept clarifies that Bible supports self-defence. Now it is high time that church looks at Abortion as self-defence of a mother, a rape victim and also self-defence of the child who will live with pain. It is a self-defence of couple who are not financial, mentally, physically and morally stable to accept the child. It's time that the church starts to understand the long term effect of distress that a mother or child or family will be going through after the birth of an unwanted child, child born with disorder and death of a mother respectively.

### **INDIAN AND ITS ABORTION LAW**

In this section we are going to understand the Abortion Law present in India and further compare its situation with that of Malta. India, the land with unity and Diversity has a problem very opposite to

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<sup>19</sup>. “Deuteronomy 22:25–27.” HOLY BIBLE, OLD TESTAMENT.

Malta. Here, Abortion is Legal to a certain extent in India it is under the Shade of Article 21, Section 312 to 316 of the IPC and the Medical Termination of Pregnancy Act, 1971. Unlike Malta or other states having no abortion laws, India allows abortion in certain circumstances and to a period of 20 weeks gestation and even in cases of rape. India understand that a Rape victim has the right to live with dignity in society and thus aborting the child is very important to provide this dignity. This concept of India can be understood by breaking the “rights” into two parts one being Interest and the other to have the capacity to realized the Interest. No law defines the Interest of the unborn or talk about its capacity to understand the Interest nor does any law talks or defines in proper sense about the right to life of the unborn. Thus, it can be seen that Right to life of the mother exceeds the right to life of unborn.

On the other hand, like Malta even the Indian Penal code 312 to 316 keeping in view the religion, tradition, and ethics say that induced abortion is a criminal offence, but unlike Malta it does not makes natural miscarriage a crime. Thus, in India Abortion is allowed with certain safeguards as encoded under the MTP Act, 1971 where it says that abortion can only be done in good faith by a registered practitioners in a proper place when circumstances are such that abortion is seriously needed. However, India does not allow abortion above 20 weeks and has not kept any exception for the same as can be seen in the case of *Nikhil D. Dattar v. Union of India*,<sup>20</sup> in this case it was only 26<sup>th</sup> week of Pregnancy that it was found that the child has a heart blockage which was serious and the Section 3&5 of the MTP Act, 1971 but the court did not make any exception and stated that under no condition can they give permission above 20 weeks.

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<sup>20</sup>2008 SCC OnLineBom1348: (2008) 110 (9) Bom LR 3293.

However, in *Ms' X v. Union of India*<sup>21</sup>, it was observed that FIGO <sup>22</sup> recognizes an ethical need to abort malformed foetus and the parents have the only right to decide in such circumstance. Thus, it can be seen that thou India has loopholes in the law they have an abortion law which safeguards the right to live of the women's. They also have a criminal code which states abortion illegal but they have exceptions to it. It also have a religious which is against abortion but the Government and Judiciary has taken a decision to balance and walk. India now faces the problem of forced abortion or Female Infanticide which is the dark side but on the other hand the mature Indian Couples are not scared to get pregnant, nor do young mothers have to travel to foreign land to get abortion done. The Rape victims are given relief and the malformed foetus is saved from a life of death after birth.

## **SUGGESTION**

The universal suggestion for this issue is that the Malta government take its turn to formulate Abortion Policy in Malta. It's high time that they legalise abortion and rescue the women. Now several questions might come up as to how easy would changing this long run ideology in one go be possible. Thus, here are some supporting views and ideology that can be used to bring a change.

Let us first start with the **Catholic approach**. It is stated in **Genesis 2:7**, "He breathed into his nostrils the breath of life and it was then that the man became a living being". Further in **Job 33:4**, it is stated: "The spirit of God has made me, and the breath of the Almighty gives me life." Again, to quote **Ezekiel 37:5&6**, "Thus says the Lord God to these bones: Behold, I will cause breath to enter you, and you shall live. I will lay sinews upon you, and will cause flesh to come upon you, and cover you with skin, and

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<sup>21</sup> Writ Petition (C) No. 593 of 2016 (Supreme Court of India), decided on July 25, 2016, available at: [http://supremecourtindia.nic.in/FileServer/2016-07-25\\_1469453114.pdf](http://supremecourtindia.nic.in/FileServer/2016-07-25_1469453114.pdf) (last visited on Feb. 11, 2017).

<sup>22</sup> International Federation of Gynaecology and Obstetrics.

put breath in you, and you shall live; and you shall know that I am the Lord.”<sup>23</sup>So, we can see from all these statements that Bible states, it is only after god puts breath in the child that it is a living being and we all know that after a child is born it takes its first breath and starts to cry sometimes the doctor have to hit the child so as to make it cry after which it can take its first breath. Further, in **Exodus 21:22** it has been stated that “if a man causes a woman to have a miscarriage, he shall be fined; however, if the woman dies then he will be put to death.” So, from this we can understand that under Bible abortion is not a very big sin because it is only punishable by a mere fine, but the Death of a women is a heinous crime for which a person will be put to death. It is really difficult to understand at this verge what to accept and what not to accept because it is that confusing point in Bible where it has been stated that life starts from womb but there are other places where it is stated that life starts after first breath.

Now there lies a contradiction and question arises what to accept and what not to accept. So let’s make it simple so that we can reach a conclusion easily. SAM says to JACK “I hate Banana” and then turns to you and say “I love Banana”. In second example, 20 years ago SAM said to JACK “I hate Banana” but now he said “I love banana.” In a third example, SAM said “I hate Banana” but his son said “I love banana”. If we analyse the entire three examples we can see in the first example Sam is contradicting, in the second one his view about Banana has changed in 20 years, thus there is no contradiction and in the third example there are two people thus there is no contradiction. Now, if we relate this example to the Bible and Christian Scripts we can find our much needed conclusion Bible and the scriptures has been written by different people in different time and of different ideology. Thus, with the change of looking at things and change in view the scripture has been different just like the second example and third examples where things are said by two different people. Now it is in the hands to the Archbishop and people who know the scripture very well to use the writings and saying of the Scriptures and Bible in an

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<sup>23</sup>The Christian Left, *The bible tells us when a fetus becomes a living being*, THE CHRISTIAN LEFT.ORG, (Nov., 31, 2012),<http://www.thechristianleftblog.org/blog-home/the-bible-tells-us-when-a-fetus-becomes-a-living-being>.

efficient manner. We can see change in opinion depending in time and people which clearly shows that Bible accepts changes in views with time and now that times has changed and ideology has changed its time that the conservative supporters make a liberal move and start advocating a middle path i.e. accept abortion with certain limitation.

Next let us talk about **Criminal approach**. Does the law of Malta allow the death of one person because of another's innocence? A proper survey shows that there is no law as such in Malta. Then why does the Government of Malta fail to take care of the mother who dies in order to respect the law of the country. The government is failing to understand the amount of depression this issue has brought into its country. Thus, the government should take notice of the "Human Right to live of the pregnant mother" who is facing life risk. The government is also failing to understand that making abortion illegal does not stops abortion totally rather it just increases abortion tourist, cause illegal abortion and further criminals land up in the country (As abortion is illegal in Malta and women aborting illegally are criminal under the criminal code). The government of Malta also fails to become a good welfare government.

Few suggestions for the Government:-

1. Formulate Abortion laws gradually and amend the Criminal Code, Firstly give importance for mothers with life risk; secondly, for girls who have been raped; thirdly, for parents having social and economic handicap and are going to give birth to a special child whose life expectancy is very less.
2. Then gradually if the government feels safe they can allow abortion on request within a certain limitation of weeks as permitted in other countries. E.g. India 20 weeks.
3. The government should take special responsibility of stopping Abortion tourism to other countries as it is highly risky for the mother as well as child. On the other hand, it is very costly and further leads to morbidity and mortality.

4. The government should also organize conferences and try and understand what other issues women are facing and try providing them first aid help.
5. The government should facilitate proper hospitals and educate Maltasian doctors in the field of abortion, now that abortion has not been practised long in Malta.
6. The government should also provide certain benefits to mothers who are suffering in a pregnancy with life risk or a girl being pregnant after rape.
7. The government should provide financial help to parents who has to get aborted because of financial issue.
8. It will be the government's responsibility to inform each mother regarding antenatal care in order to prevent mother and foetus from harm. They must also be neutral i.e. they must on other side perform the role of advocator to save the life of foetus and teach them the future consequences of aborting their first child or misusing Abortion Legalization.

### **CONCLUSION: ABORTION LAW IS NEEDED**

**“Making abortion illegal does not stops it from occurring-it just forces women to obtain clandestine and unsafe procedures”**

It is not only Malta where abortion is illegal. In this Research paper we have mainly concentrated in Malta but these other countries also which face similar problem like women of Malta. Most of these countries are influenced by the Catholic Church and in turn the criminal code. Keeping abortion illegal has endangered the women's health. It has affected the mental and physical health of a women and motherhood has become a cult. There are other perspectives also through which we can say that abortion law in each country is a necessity.

The United Nations has made many attempts to take note in the matter of “Right to Abortion” and the need of Abortion laws in all countries instead of criminalizing it. The Maputo Protocol was the first human rights treaty to explicitly call on states to ensure access to abortion in certain circumstances. Article 14 of the protocol calls upon all the state to join hand and allow abortion in certain cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.<sup>24</sup> It is also observed that places where abortion is illegal there is a great trend of unsafe abortion the UN says that it is four times greater than countries having abortion law. The statistics show that in 2011 (26.7 unsafe abortions per 1,000 women aged 15 to 44 years) than in countries with liberal abortion policies (6.1 unsafe abortions per 1,000 women aged 15 to 44 years).<sup>25</sup> It can also be seen that Principal Human Rights treaties formulated by the UN and signed by different countries do not explicitly have the right to abortion mentioned but the sense of this right can be easily interpreted from the Articles. Be it the ICCPR, UDHR or the CRC all talks about the Right to Life and safeguard both right of child and mother. Further, WHO has stated the risk of unsafe abortion to be too dangerous, they state that unsafe abortion can cause “Complications of unsafe abortion include haemorrhage, sepsis, peritonitis, and trauma to the cervix, vagina, uterus and abdominal organs.”<sup>26</sup> The he United Nations International Conference on Population and Development, 1999 review and appraisal process that healthy system of abortion should come up. About 40% of women live in countries which has abortion as illegal and 20% in countries where abortion is legal.<sup>27</sup>

Abortion is situated with permitting a lady with the privilege to decide about when she needs to have a child in connection to her age, budgetary security and relationship strength. It is not the place of

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<sup>24</sup>*Information series on sexual and reproductive health and rights “Abortion”, UNITED NATIONS HUMAN RIGHTS COMMISSION REPORT.*

<sup>25</sup> United Nations, Department of Economic and Social Affairs, Population Division (2014). *Abortion Policies and Reproductive Health around the World* (United Nations publication, Sales No. E.14.XIII.11).

<sup>26</sup>World Health Organization, *Safe abortion: technical and policy guidance for health system*, 2<sup>nd</sup> Edition, Pg. 19.

<sup>27</sup>*Id.* at Pg. 90.

government to enact its legislative policy against a lady's decisions. Bringing up a child is not a simple undertaking and requires social and enthusiastic duty combined with money related assets. Considered all these things if a women feels they are not prepared for a child, it implies the pregnancy is undesirable thus imposing the child on the parents will be more dangerous than abortion as the resultant child will develop in a non-helpful and ruinous condition without the affection, mind and dependability that a youngster needs from its parents. The contention against abortion is an ethical contention which depends from individual to individual. Those people who see it ethically permissible to do abortion, they must be given the right to do so and the individuals who don't have confidence in abortion must have the right to take their own decision. An embryo is not lawfully or deductively a man or individual so premature birth can't be likened to murder or ending an existence since the baby is not a man nor alive moreover a baby equivalent to a brain dead individual with no consciousness or awareness so in reality it is dead.

Making abortion illegal does not stop it from occurring-it just forces women to obtain clandestine and unsafe procedures. It is a women's fundamental right to abort its child i.e. right to live. Even when safety measures are taken, mishaps can and do happen. For a few families, this is not an issue. But for others, such an occasion can be calamitous. An unintended pregnancy can build pressures, upset, dependability, and push individuals beneath the line of financial survival. Being a mother is only the choice of the women. Many hard battles have been fought to win political and financial equality for ladies. These battles won't be worth much if abortion decision is denied. To have the capacity to choose a protected, lawful abortion makes these numerous battles successful.<sup>28</sup> Legal abortions protect women's health. Legal abortion not only protects women's lives, it also protects their health. For there are many women with heart disease, kidney disease, severe hypertension, sickle-cell anaemia and severe diabetes, and other illnesses that can be life-threatening, the availability of legal abortion has helped avert serious

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<sup>28</sup>Micael Makenzius, *Global and Regional Patterns of Abortion Laws, Abortions and Maternal Mortality*, DEGREE PROJECT IN BUILT ENVIRONMENT, FIRST CYCLE STOCKHOLM, 2016-06, at 2-32.

medical complications that could have resulted from childbirth. Before legal abortion, such women's choices were limited to dangerous illegal abortion or dangerous childbirth.<sup>29</sup>Further, the abortion is a protection for girls who get raped or it is also a protection for sex-workers who get pregnant in the course of prostitution. Thus, keeping all these above stated factor in mind we can see how important abortion is for women's. All through the research paper we have seen the negative aspects of keeping abortion illegal we could also see the suffering of each women and the upholding crime against them who had faced life risk in there pregnancy. There is another kind too where if a women induces miscarriage unknowingly then also she is held a criminal. Thus, Abortion laws are a needs and it is to be maintained in all country for the welfare of the women citizens. Finally, ending this research paper with the words of famous Frederica Mathews-Green "*No woman wants an abortion as she wants an ice-cream cone or a Porsche. She wants an abortion as an animal caught in a trap wants to gnaw off its own leg.*"

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<sup>29</sup> My News, *Why Abortion Should be Legal*, MY NEWS 24 (Dec., 31, 2013, 08.50), <https://www.news24.com/MyNews24/Why-abortion-should-be-legal-20131230>.