The Abortion Debate in South Africa

by Helen Rees

This article identifies pro and anti-abortion lobbyists as being the main contenders in the debate about abortion in South Africa. The basic elements of their respective positions are outlined. The present South African law, the Abortion and Sterilization Act of 1975, is explained. The Act is said to have failed in achieving its purpose and also in meeting the needs of South African women. The Act is compared with the law in Britain. The author argues that the laws on abortion in South Africa should be liberalized. The effects of liberalizing the law are discussed and questions about the practicalities of changing the law are raised.

In South Africa, unlike many other countries, the debate over women's right to abortion has not been a source of major controversy. This situation is now beginning to change In April 1990, Dr. Rina Venter, Minister of National Health and Population Development, requested that interested parties give their comments on whether the abortion laws should be changed. One year later she told Parliament that of the 48 846 respondents, 98.62% were in favour of keeping the law as it was, Therefore, she said, no amendments would be made.

Also in April 1990, the Maputo Health Conference, a meeting of the ANC and progressive health and welfare organisations, supported a recommendation that abortion should be available on demand, and that there should be comprehensive abortion counseling services.

What is clear about these two positions is that the abortion issue is set on a collision course. Why is abortion such a contentious issue?

The core of the argument against abortion is that life is present from the time the egg is first fertilized, and that this life must be preserved at all costs. It is felt that most women are in a position to prevent pregnancy if they want to. When an unwanted pregnancy occurs, the argument goes, organisations exist that will support that woman through her pregnancy and with her child. This point of view is supported by showing the "evils" of abortion, using vivid photographs of aborted foetuses with beating hearts and moving limbs.

The pro-abortion lobby argues its case from both a political position and from a more pragmatic point of view. At a political level they argue that the entire economic structure

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of South Africa is patriarchal. The women's role is to service men, to provide a pool of disorganized and cheap labour in the workplace, to bear children and to look after them, and to run the home. If this position is to be challenged, and if women are to play a full part in society, then they must be able to choose when, and if, they want to have children. Abortion is seen as a vital part in this liberation.

On a more pragmatic level, pro abortionists believe that women are having abortions anyway, despite its illegality, and therefore that the abortion law should be amended so that thousands of women are no longer criminalised.

South African law - the present situation

Until 1975, abortion was prohibited in South Africa, except in the case of absolute necessity. An abortion would only be granted if the mother's life would be at risk if the pregnancy was to continue.

In 1975, the Abortion and Sterilization Act was introduced. This is the legislation that specifies who can get a legal abortion today. It also discourages illegal abortions with heavy penalties of 5 years imprisonment or a R5000 fine or both for people doing such abortions. The overall aim of the Act is to decrease the total numbers of abortions which are done.

The Act only allows for an abortion where:

- continued pregnancy would endanger the life or constitute a serious threat to the physical or mental health of the women.
- there is a serious risk that the child will suffer from a serious physical or mental handicap.
- the pregnancy has resulted from rape or incest.
- the pregnancy is conceived by a woman who is mentally handicapped or unable to understand the full implications of parental responsibility.

The Act excludes the majority of women who are seeking abortion. Furthermore the procedure that has to be gone through to obtain an abortion is made deliberately difficult so that fewer legal abortions are done. The procedure is as follows: a doctor must suggest an abortion. Two other doctors must agree in writing that the suggested abortion falls within the law. These two doctors must in no way participate in, or assist with, the abortion. At least one of them must have practiced for a minimum of 4 years. Where the ground of the abortion is mental health, or rape or incest, there are other special provisions in the Act.

Furthermore, the abortion must be performed in a state controlled institution or an institution that has been designed for that purpose by the Minister. The written authority of the person in charge of the institution is required.

A procedure as cumbersome as this makes it difficult for the majority of South African women to qualify for an abortion even if they are legally entitled to it. The health and legal infrastructure to support this kind of legislation is simply not available to the vast majority of people in South Africa today.

Effects of the 1975 Abortion and Sterilization Act

The act has certainly been successful in restricting the number of legal abortions. Approximately 40 % of applications for legal abortions each year are successful. Only 800 - 1 000 women get a legal abortion each year. Over 70% of these are done on psychiatric grounds. Due to the difficult procedure involved, a high proportion of these abortions are done on white women.

It is interesting that the private health sector, understanding that there was a demand for abortions that the state health sector would not meet, found legal ways to give women their abortions. In 1988 Sandton Clinic did 257 abortions, 241 of which were done on psychiatric grounds. While this service was much appreciated by the women able to use it, in 1988 the procedure costed R800. This restricted these abortions to the rich, and predominantly to white woman.

The Act has, however, not led to a decrease in the total number of abortions. In a recent court case where a doctor was being prosecuted for doing an illegal abortion, the judge commented that "if the [legal] grounds upon which an abortion may be procured are too restrictive, the paradoxical situation arises that this would increase the number

of criminal abortions". This is exactly what has happened in South Africa today.

The Abortion Reform Action Group (ARAG) estimates that 200 000 to 300 000 illegal abortions are done here each year. Because of its illegality, accurate statistics are difficult to establish. However, it is accepted that less than 1% of legal and spontaneous abortions usually become infected. This is unlike the situation with non-legal abortions which frequently result in some degree of infection. At Baragwanath alone, about 15 000 patients each year are admitted with infections that are often associated with non-legal abortions. This suggests that ARAG's estimate is not exaggerated.

The Abortion Act has failed in its aim to control the total number of abortions. It has also failed to respond to the needs of our society. A future South African government will be faced with the task of reviewing this law.

The law in other countries

Most countries have some kind of legislation on abortion. In many countries where Catholicism is the dominant religion, such as Italy and the Republic of Ireland, abortion is forbidden except in very strict circumstances. Other countries such as Yugoslavia, have very liberal abortion laws, so that abortion really is "on demand" and has become an alternative to contraception. South African abortion law is based on British law. However the British law is much more liberal than ours is.

The British (excluding Northern Ireland) law was introduced in 1967. It outlines specific circumstances when to give an abortion is not a crime. One of these grounds is that the continuation of pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated. Another is that the continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated.

Two medical practitioners have to certify "in good faith" that these conditions have been satisfied. The abortion must be done in the first 28 weeks of pregnancy.

The British law can be interpreted in many different ways. Some doctors refuse to do an abortion unless there is a real risk of death to the mother. At the other end of the scale are doctors who believe that it is a woman's right to decide. These doctors tend to interpret the law very liberally arguing that abortion always falls within the terms of the law. Abortion, they say, is statistically always safer than a pregnancy going full term.

Why the South African abortion law should be liberalized

Abortion is an historical and international reality. In countries where abortion has been made illegal, women continue to have 'backstreet' abortions. In South Africa today,

despite many new forms of contraceptive, abortion is used by women of all races and all classes to terminate unwanted pregnancies.

To understand why South Africa should move towards the liberalization of its abortion laws, we need to consider why women have unwanted pregnancies, and whether the factors producing unwanted pregnancies will continue to exist in a future South Africa.

Health services are often inaccessible or unavailable to women. Where they do exist, the methods of contraception offered to women are often unacceptable, either because of the way that they have to be used, or because of their side effects. Even when women do find a method of contraception that suits them, there is a risk of contraceptive failure with all methods except the combined pill and injectable contraceptives. Some women are forbidden by their partners from using contraception. Others, either because of their low level of education, or because of their young age, simply do not know about contraception. Many women have times in their lives when they use contraception effectively, and times when they use it irregularly or not at all, even though they don't want to be pregnant. The alternatives to running the risk of pregnancy are often not that attractive to women.

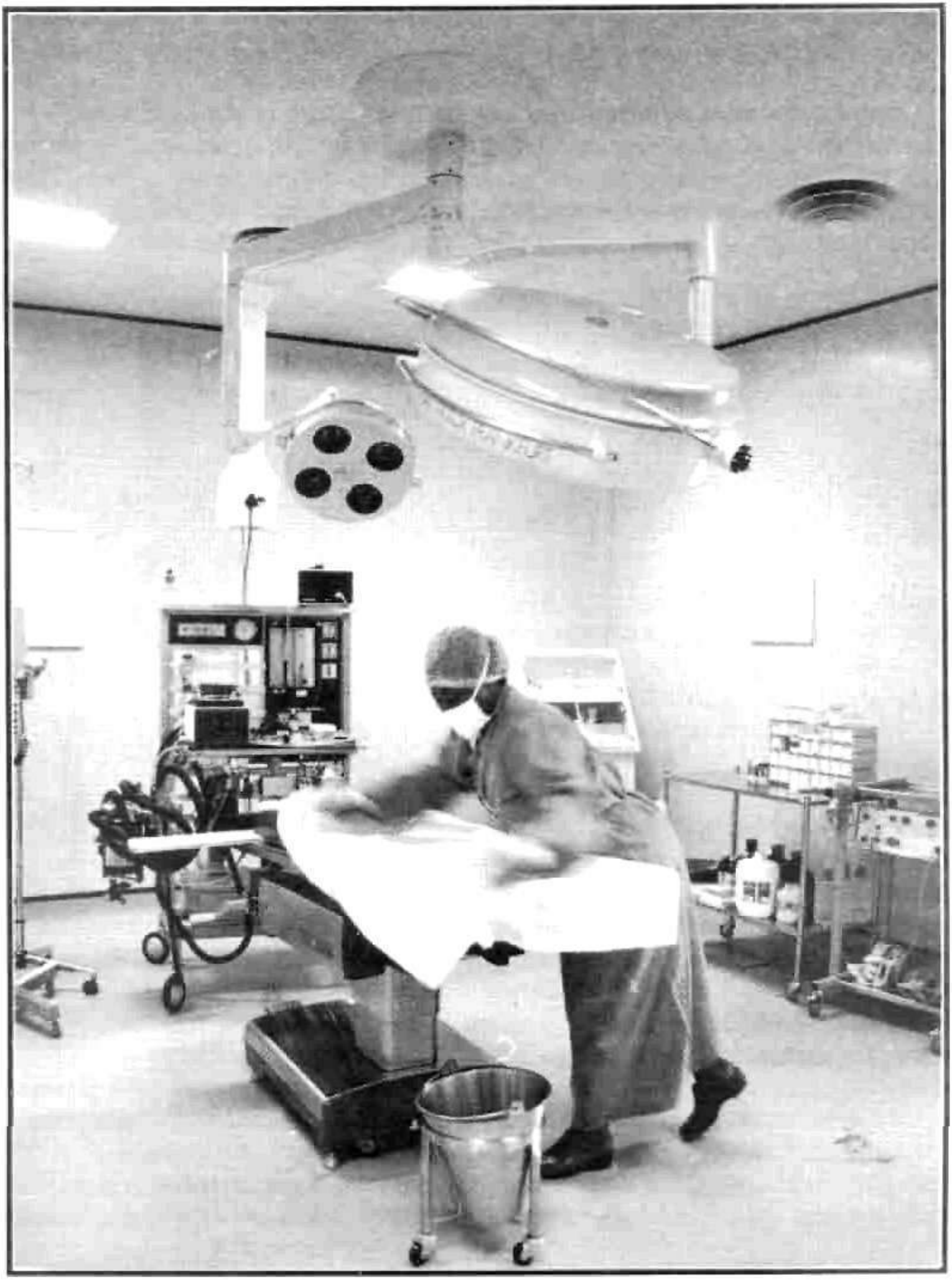
Because of the history of apartheid, many black South African women have a further suspicion about using contraception. A widely held view is that family planners often prescribe contraceptives, not in the interests of the individual woman, but because of an unwritten State policy which seeks to control the population growth of the black interest.

Lastly, we should consider the babies of women who are forced to continue with unwanted pregnancies. A study from Sweden of children of women who were denied abortions 20 years earlier showed them to be in poorer health, with histories of more psychiatric care, and with a higher rate of alcohol use than a control group of young adults. Sweden has extensive welfare and support services which South Africa does not. Here large numbers of children suffer from malnutrition. Problems of child abuse and of abandoned and neglected children are widespread. The outlook for the children of unwanted pregnancies in South Africa is no doubt much worse than in a country like Sweden.

Effects of liberalizing the abortion laws

The most obvious effect of a more liberal abortion law would be that the number of legal abortions will increase, and that of illegal abortions will decrease. Legal abortion, and particularly early legal abortion, has a very low risk of producing bleeding, infection or death in the women, when compared to illegal abortion. Women tend to present earlier for abortion when it is legal. The physical trauma that they go through is also reduced.

Secondly, the psychological trauma for women of either illegal abortion, or of



continuing with the unwanted pregnancy, is diminished by legalizing abortion. Many studies show that the woman's psychological and mental state, and interpersonal relationships, improve after counseling and therapeutic abortion.

Anti-abortionists often argue to the contrary and give many examples of women who have had abortions and are very unhappy afterwards. Both these arguments are probably true; many women with 'unplanned' pregnancies feel ambivalent about them. They partly want the pregnancy and partly don't want it. A woman must feel very sure that she wants an abortion if she is not going to feel some kind of regret afterwards.

Some practical questions

There are many issues still to be addressed in developing a new abortion policy in South Africa. Firstly, how would a new abortion law be worded? Would it be written in the kind of way that British law is written, enabling liberal health workers to allow women to decide for themselves, and allowing health workers who are against abortion to prevent women from doing so.

Secondly, would we have a cut off point for foetal age beyond which an abortion could not be granted? In the U.S.A., the supreme court has made a ruling that once the foetus is viable (able to live outside of the mother), the interests of the foetus are more important than the rights of the mother and abortion is illegal. Before this time it is the woman's right to decide whether to have an abortion or not.

Thirdly, in South Africa are we really in a position to have 2 health workers as signatories for each referred abortion, and if so, who should these health workers be? In many rural areas, women only have access to nurses but little access to doctors. The Nursing Council has traditionally been very reserved about the role of nurses even under the existing act. Would they permit nurses to be the consenting health worker for abortions?

And lastly, what exactly do we mean by abortion on demand? With the introduction of new abortion technologies, women may well be able to get effective over the counter abortions at a very early stage in their pregnancy. Given the poor state of our health services, is this the only realistic approach to the abortion problem? The South African "abortion debate" is just beginning!

Helen Rees is involved in the Women's Project at the Centre for Health Policy