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EDITORIALS

Criminalised abortion in UK obstructs reflective choice and best care

Theresa May could seize this opportunity for evidence based reform

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The recent decisions to liberalise abortion laws in the Republic of Ireland and the Isle of Man[1] have put pressure on the British prime minister, Theresa May, to consider decriminalising abortion in the UK. Although she believes "that a woman should be able to access safe, legal abortion,"[2] she has not yet acted to initiate amendment of the 1861 Offences Against the Person Act—perhaps in fear of Northern Ireland's anti-abortion Democratic Unionist Party (DUP), on which her minority government depends.

Senior DUP figures have threatened "consequences" if May were "foolish enough" to allow her Tory party a free vote on this sensitive question and made confident predictions that "the prime minister won't want to touch this particular issue at the minute."[3] And certainly, those most affected by the criminal status of abortion in the UK are women in Northern Ireland, where abortion is prohibited even after rape or in the case of fatal fetal anomaly, and where women seek it under stigma and in fear of jail.[4] However, the particular plight of women living in this part of the UK reflects the wider problem of a UK law that is no longer fit for purpose.[5]

The UK 1967 Abortion Act was introduced to provide a legal defence against the criminal law passed in 1861, but that law remains on the statute book. The abortion act still requires two doctors to predict the balance of future harm—usually mental—from continuation of the pregnancy of a woman they may never have met previously, and for the abortion to take place at a designated, registered place. If these conditions are not met, the 1861 act allows for a maximum penalty of life imprisonment for the practitioner or the woman. Recognising this situation as hypocritical and anachronistic is entirely compatible with regarding abortion as a serious and sensitive matter. Unsurprisingly, therefore, there is widespread public and cross-party parliamentary support for decriminalisation in the UK,[6] including in Northern Ireland.[7]

The arguments for decriminalisation are compelling. Firstly, abortion is ubiquitous, whether or not it is available legally, safely, and respectfully.[8] Women in the UK who experience difficulties accessing care in the clinical setting because of barriers such as long travel distances, abusive partners, or physical and mental health problems are seeking medical abortion from online telemedicine services despite the risk of prosecution.[9 10]

Secondly, contrary to fears sometimes expressed, decriminalisation does not increase abortion rates, but it does reduce stigma and improve quality of care and access.[11 12] Thirdly, UK abortion law impedes advances in safe medical abortion practice, including the trend away from paternalism towards patient centred services and services that are nurse led or delivered using telemedicine.[13]

Finally, the law is out of step with those in many other European countries and with UK social values.[6 7] Underlining Britain's isolation, the UK Supreme Court recently ruled that abortion legislation in Northern Ireland is incompatible with the European human rights convention regarding the right to respect for private and family life.[14]

Criminalisation is a blunt tool. Conscientious attempts to apply the grounds for termination permitted under the 1967 act can feel to the medical practitioner like an invitation to overstep clinical competence—a kind of clinical contortion. The idea of predicting mental health outcome with confidence, against a woman's own testimony, is inconceivable for most practitioners. Applying the law as it stands, we can at best inform a woman of what the law requires, inquire sensitively whether she believes it to be fulfilled in her case, explore doubt conscientiously, inform her of risk, and trust her response. At worst, the veiled threat of being forced to continue an unwanted pregnancy can place women on their guard and undermine any reflective process.

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The law is left either coercive (as in Northern Ireland) or impotent (as in the rest of the UK), but in neither case is it conducive to best clinical practice. There must, of course, be room for legitimate debate and a plurality of positions on this sensitive topic. Concern that abortion should be a reflective not a heedless process is justified, though not the only issue at stake. But criminalisation does not support reflectiveness.

Future UK law could support conscientious reflection in abortion care more effectively by guaranteeing women access to the resources they need to make the ethical and practical choices that are theirs to make and live with. Resources currently used to "police" choice and access[15] could be reallocated to offering counselling services to women who are ambivalent or whose abortion request signals a wider life crisis, and to ensuring immediate access to effective post-abortion contraception. That way, ineffective, unjustified, and unpopular attempts to constrain women's reproductive choices would be replaced with active support to ensure that, as far as possible, each woman makes the right choice for her circumstances.

Right now, the British prime minister has an opportunity to champion evidence based reform of an outdated, ineffective, and unpopular law, with the backing of health professionals and public opinion in Great Britain and Northern Ireland. To do so, despite the threats made against her, would be a memorable act of courage and leadership.

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