

5: Abortion and Consent

The fifth of the ten part essay series has been adapted from presentations by Elisa Slattery, Sonia Correa and Rupsa Mallik at the Global Dialogue on Decriminalisation, Choice and Consent.

When she was 17 weeks pregnant, 31-year-old dentist Savita Halappanavar began to have a miscarriage and was rushed to the Universal Hospital Galway in the Republic of Ireland. Here the doctors deemed the foetus unviable - in other words, it would not survive. But it still had a heartbeat, which according to Ireland's laws means that unless the life of the pregnant woman is under threat, an abortion is illegal. Despite her pleas to undergo the procedure, the hospital refused. But three days later, when Savita was in the restroom she collapsed. At this point the remains of the foetus was removed from her womb - but it was too late. Her condition worsened, and just seven days after her initial hospital visit, Savita Halappanavar died from organ failure and cardiac arrest.

How did this happen? It's been interpreted differently by various parties, especially the medical fraternity, Ireland's legal system and the Catholic Church - none of whom wanted to be directly implicated in her death. But Ireland has some of the strongest anti-abortion legislation in the Global North (including a 14 year penalty for both women and healthcare providers if an 'unnecessary' abortion is carried out) and an arduous process around who can determine what constitutes a 'real and substantial' threat to the life of a pregnant woman. In fact, it's so difficult to attain an abortion legally that most women living in the Republic of Ireland travel to the United Kingdom or other countries for one.

But there's something deeper at play here - something that is rearing its head in debates, legislations and hospitals around the world: the idea that abortion constitutes *harm*, and by extension, that the pregnant body must be regulated. But who is harmed when a woman chooses to have an abortion? Is it the unborn foetus, the woman's body, or in fact, something more insidious - a procreative pact that keeps patriarchal societies afloat?

Anti-abortion movements in Catholic countries are generally attributed to the Church's values and doctrines. Historically speaking, however, this isn't entirely accurate. In Brazil, for example, colonial criminal law that overlapped with medieval canonical law criminalised a wide range of sexual acts; but abortion was never one of them. However, the Brazilian Penal Code in 1830, adopted soon after Brazil's independence in 1822, criminalised the practice of abortion - punishing agents of abortion, but not women who aborted. This law was in place for 39 years *before* the Catholic Church finally adopted a dogmatic position against abortion, after debating the matter for many centuries. Then in

the revision of the Brazilian Penal Code of 1890, this criminalisation was extended to women - both those who 'self-aborted' and those who resorted to the help of others.

Why does this history matter? Well, we generally think about anti-abortion campaigns as being linked to the influence of religion. But in reality, a closer look at history shows us that criminal laws around abortion directly came from the politics and policies of 'managing' populations and legislating a certain code of morality onto women's bodies.

A more recent development within this history is the introduction of ultrasound technologies, which allowed the foetus to be crystallised from an abstraction into a visible entity separate from the woman. With the introduction of these technologies, the foetus took on a life of its own and influenced public imagination in a way that was not possible before. In this way, what started off as a means of population control (and still continues to be used for this very purpose in many countries) became a discourse about the right to life of the foetus as a living entity. And this profoundly impacted the right of a woman to choose and consent and to make her own reproductive decisions.

Skip across oceans to India, where abortion has been legal since the Medical Termination of Pregnancy Act was passed in 1971. In a situation similar to Brazil, the Act was not passed due to feminist concerns over a woman's right to choose, but amongst other things, as a means of curbing a growing population. By the early 90s, the use of screening technologies to assess the foetus started becoming widely available, but also allowed for the practice of sex determination of the foetus. The introduction of these technologies took place at a time when the sex ratio was rapidly declining (females per thousand males), and over the past two decades, the abortion narrative in India has been fused together with the discourse of 'female foeticide'.

In 2011 Lightship Production aired the following short film, 'Life Before Birth', in which the voice of an unborn girl speaks to a pregnant woman, pleading for her life.

The visuals presented by the above advert are hardly an anomaly and resemble countless publicity devices that began in the mid-1980s and have populated public space and imagination for close to two decades. At the heart of this imagery are two central figures: first, the unborn girl child, speaking and pleading for her survival; and second, the contrasting image of the cruel (and almost always voiceless) woman who is seeking an abortion. Here the female foetus has been humanised into a living and speaking girl child, where an abortion would equal her murder (hence the use of the violent word 'foeticide').

Apart from breathing life into the foetus, visuals like these also influenced the way in

which pregnant women were perceived. Adverts like the one above show us a lot of female faces: the pregnant woman, the mother-in-law, the woman's friends, and so on. This then forms a highly fictive story of women's decision making that positions women as collectively unwanting of their daughters. But the reality is that Indian patriarchal society does not want its girls or its women. There are generally very strong male voices and values at play when it comes to women undergoing screenings of foetuses and the abortion decisions that follow this. However, these male voices have been wilfully erased to allow for the creation of the cruel, abortion-seeking mother. In fact, it was only in 2011 that Indian courts ruled a woman did not need her husband's consent to undergo an abortion (irrespective of the sex of the foetus). But visuals like these feed into popular perceptions of the woman who 'chooses' to eliminate her unborn daughter, thus perversely placing a chunk of the burden of India's declining sex ratio on women themselves.

And now, it is against this highly fraught and complex backdrop that Indian feminists must advocate for the rights of women to have an abortion; the right of a woman to choose. As feminist author Nivedita Menon writes, 'it seems to me we cannot hold simultaneously that abortion involves the right of women to control their bodies, but that women must be restricted by law from choosing specifically to abort female foetuses. We seem to be counter posing the rights of (future) women to be born against the rights of (present) women to control over their bodies.' The language of consent and women's rights has crept into movements around 'saving' the girl child, whereby the unborn girl child's imagined consent is given preference over a pregnant women's choice - all in the name of women's rights. And the fact that the girl child will eventually become a grown woman whose consent will in turn be disregarded is, of course, entirely missing from the conversation.

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