

Received: October 2023 Accepted: December 2023

DOI: <https://doi.org/10.58262/ks.v12i1.336>

Critical Analysis of the Legislation on Abortion and the Fundamental Rights of Women in Ecuador

Análisis Crítico De La Legislación Sobre El Aborto Y Los Derechos Fundamentales De Las Mujeres En Ecuador

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Problem Statement

The investigative approach to this problem becomes important due to the manifestations and general causes surrounding it. On the one hand, it is crucial to understand the current legislation on abortion and its impact on the exercise of fundamental rights in countries where it has already been implemented. This involves exploring how abortion is defined and regulated, what restrictions exist, and how women's autonomy in decision-making about their bodies is protected.

Abortion is considered a crime, except in very limited cases, such as a risk to the woman's life or when pregnancy is the result of rape. To implement the right to abortion more broadly, a legal reform would be required to modify current restrictions and establish a clear and accessible legal framework for women who wish to terminate an unwanted pregnancy (Salazar, 2022).

The issue of abortion is a complex and delicate matter that must be addressed considering the fundamental rights of women in Ecuador. All women should have autonomy over their bodies and the right to make informed and free decisions regarding their reproductive health.

The criminalization of abortion only leads to unsafe practices, endangering women's lives. Furthermore, limiting access to abortion denies women the ability to make informed decisions and exercise their autonomy. The State must ensure access to comprehensive reproductive health services, including the provision of information, counseling, and safe and confidential medical care.

In the case of the critical analysis of abortion legislation and the fundamental rights of women, it is essential to establish a precise definition that reflects the complexity and relevance of this issue.

In this regard, various authors have addressed the issue, offering perspectives and approaches that enrich the understanding of the problem. For example, according to (Salazar, 2022), the problem refers to the lack of legal and social guarantees for the full exercise of women's reproductive rights, including safe and legal access to abortion in certain circumstances.

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Abortion should not be approached as a moral or religious issue but as a matter of human rights. Women face various circumstances in their lives, and sometimes, they may find themselves in difficult situations where an unwanted pregnancy can have significant consequences for their physical, emotional, and socio-economic well-being. Therefore, it is essential to provide them with safe and legal access to abortion services to safeguard their health and dignity.

On the other hand, Angie Távora, Maritza Núñez, and Miguel Tresierra (2022) argue that the problem lies in the existence of legal and cultural barriers that limit women's access to quality reproductive health services and the making of free and informed decisions about their bodies, including voluntary pregnancy termination. Similarly, the author Eldon Vásquez (2022) argues that the problem is related to the lack of recognition and effective protection of women's fundamental rights, such as the right to health, reproductive autonomy, and gender equality, in the regulatory framework on abortion.

It is also important to note that the issue of abortion is not only about the woman but about society as a whole. It is necessary to promote comprehensive sexual education and effective contraceptive methods to prevent unwanted pregnancies in the first place. Additionally, support and assistance programs should be established for those women who decide to continue with an unplanned pregnancy.

These definitions reveal a convergence around the need to address the limitations and challenges faced by legislation in recognizing and guaranteeing the fundamental rights of women regarding abortion. The problem is characterized by the existence of legal, cultural, and social barriers that restrict the full exercise of these rights and create inequities in access to reproductive health services.

The critical analysis of abortion legislation and the fundamental rights of women requires contextualization to understand the specific situation and its relationship to women's rights.

It is important to consider the current legal and juridical framework regarding abortion and the fundamental rights of women. The Comprehensive Organic Penal Code (COIP) establishes the rules governing abortion, defining the conditions under which it is allowed and the corresponding sanctions in case of its performance outside legal parameters.

However, it is necessary to conduct a critical analysis of this legislation and its impact on the fundamental rights of women. This involves assessing whether the existing regulations guarantee the full exercise of women's reproductive rights and whether international human rights standards are respected.

It is important to examine how abortion legislation affects women in terms of access to adequate health services, reproductive autonomy, legal certainty, and protection of their physical and mental health. Additionally, the social, economic, and cultural effects of these regulations on women's lives and their ability to make informed decisions about their health and well-being should be considered.

The legal and normative framework is a crucial aspect to understand the protection of women's fundamental rights and access to abortion. To analyze this issue, it is necessary to carefully examine existing legislation and normative frameworks.

Abortion legislation may vary in terms of legal deadlines, medical conditions, and circumstances allowed or prohibited for pregnancy termination. Authors like Liliana Voto (2019) emphasize the importance of considering specific laws governing abortion and how they impact women's reproductive rights. Additionally, policies and programs implemented to ensure access to safe and legal abortion services should be examined.

In this context, it is essential to consider international standards of human rights and gender equity. Authors like (Castañeda & Cruz, 2021) point out that laws and policies related to abortion must comply with the principles established in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international human rights treaties.

The legal and normative framework should also address the protection of women's fundamental rights in general. Legal provisions related to gender equality, reproductive autonomy, dignity, and women's health must be analyzed. Authors such as (Solari, Solari, Wash, Guerrero, & Enríquez, 2019) argue that legislation should guarantee access to quality reproductive health services and promote informed and coercion-free decision-making.

Identifying possible gaps, inconsistencies, or limitations in the legislation that may affect the full exercise of women's rights regarding abortion is important. Authors (López, 2019) emphasize the need to assess whether the legislation meets international standards and whether there are legal or administrative barriers hindering access to safe and legal abortion services.

In the critical analysis of abortion legislation and women's fundamental rights, it is essential to understand the social and cultural context in which this issue unfolds. The sociocultural environment has a significant impact on the perception, access, and barriers that women face when seeking to terminate a pregnancy.

Firstly, it is necessary to examine the ingrained beliefs in Babahoyo's society regarding abortion. Social norms and cultural values play a crucial role in shaping opinions and attitudes toward this practice. Authors (Moldenhauer, 2021) highlight that, in some contexts, abortion may be heavily stigmatized due to religious, moral, or traditional considerations. These beliefs can influence the negative perception of women seeking to terminate a pregnancy and can create significant social barriers.

The social context can also influence access to abortion. The availability and accessibility of reproductive health services, including safe and legal abortion services, may be affected by factors such as the geographical distribution of health centers, the training of medical staff, and policies. Authors like (Rivera, Chacón, & González, 2020) point out that in environments where resources are limited and sexual and reproductive education is deficient, women may face difficulties in accessing safe abortion services and may resort to unsafe or clandestine methods.

Furthermore, it is important to address the stigma and social barriers faced by women seeking to terminate a pregnancy. Social stigma can manifest through discrimination, judgment, and social exclusion. (Carrillo, et al., 2021) highlight that stigma can have negative consequences for women's health and well-being, as it can limit their ability to seek quality medical care and affect their mental health. Understanding how these stigmas and barriers affect the exercise of women's rights and seeking strategies to challenge and overcome these limitations is fundamental.

In the critical analysis of abortion legislation and women's fundamental rights, it is crucial to examine the international legal framework that protects women's human rights. Women's fundamental rights are recognized in various international conventions and treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Universal Declaration of Human Rights.

It is necessary to evaluate the intersection between reproductive rights, women's rights, and abortion legislation. Reproductive rights encompass women's right to make free and informed decisions about their sexual and reproductive health, including the option to terminate a pregnancy. Abortion legislation must ensure the respect and protection of these fundamental rights, without discrimination or coercion. It is important to examine how legislation addresses this intersection and whether it complies with international standards.

It is crucial to assess whether legislation aligns with international human rights standards. International standards promote access to safe and legal abortion services as an integral part of women's reproductive rights. Authors like (Castiblanco, Coronado, Morales, Polo, & Saavedra, 2022) emphasize the importance of ensuring access to safe and legal abortion services to protect women's health and rights. When evaluating legislation, aspects such as availability, accessibility, quality, and confidentiality of abortion services must be considered.

Furthermore, it is necessary to examine the experiences and consequences of abortion legislation. This involves analyzing how legislation affects women in terms of their autonomy, health, well-being, and rights. The barriers that women face in accessing safe and legal abortion services must be considered, as well as the physical, emotional, and social implications that may arise from the restriction or criminalization of abortion. The importance of considering women's experiences and needs when designing policies and legislation related to abortion is emphasized.

In the critical analysis of abortion legislation and women's fundamental rights, it is crucial to investigate the experiences of women affected by these restrictive laws. Abortion legislation can have significant consequences in various aspects of women's lives, including their health, well-being, autonomy, and gender equity.

It is necessary to analyze the physical consequences that women face due to legal restrictions on abortion. Limitations in access to safe and legal abortion services can lead women to resort to unsafe or clandestine methods, increasing the risk of serious complications to their physical health. These consequences may include infections, bleeding, uterine injuries, and even death. Authors like (López, 2019) emphasize the importance of ensuring access to safe abortion services to protect the health and lives of women.

In addition to physical consequences, it is essential to examine the psychological and emotional consequences that women face due to legal restrictions on abortion. The criminalization and stigma associated with abortion can generate feelings of guilt, anxiety, depression, and trauma in women forced to face unwanted or non-viable pregnancies. These consequences can have a lasting impact on the mental and emotional health of women. It is necessary to recognize and address the psychological impact of abortion legislation, as well as provide adequate support to women in need.

Additionally, it is important to examine the social and economic consequences that women face due to legal restrictions on abortion. Lack of access to safe abortion services can have a negative impact on women's education, career, and financial stability. The additional responsibilities associated with raising an unwanted child can limit opportunities for personal and professional development. These consequences can contribute to the perpetuation of gender inequalities and hinder gender equity in society.

When contrasting the reality of the problem with the theoretical framework, it is important to identify the similarities and inconsistencies between existing theoretical approaches and the specific research problem on abortion legislation and the fundamental rights of women.

Basic essential similarities between theoretical approaches and the problem at hand can be found. Authors such as (Rivera, Chacón, & González, 2020) have emphasized the importance of ensuring women's access to safe and legal abortion services as a fundamental right to preserve their autonomy and health. These theoretical approaches support the need to critically examine legislation and its impact on women's rights.

It is also necessary to recognize the limitations and shortcomings of previous research in addressing the specific problem situation. Some studies may have focused on general analyses of abortion legislation without delving into the context and particularities of Ecuador. Other studies may not have adequately addressed the social and cultural consequences that influence the perception and access to abortion in this region.

Overcoming these limitations and focusing on the specific reality of Ecuador when contrasting the theoretical framework with the problem is necessary. This involves critically examining the specific manifestations of legislation and its impact on the fundamental rights of women in this specific context. It is important to fill existing gaps in the literature and provide a more complete and contextualized perspective on the problem.

This research intends to critically analyze abortion legislation and the fundamental rights of women to identify possible gaps, inconsistencies, and limitations in current legislation that may affect the exercise

of women's rights. The goal is to fill existing gaps in the literature and provide a more comprehensive and contextualized perspective on the topic in the specific context of the implementation of rights in Ecuador. Through a multidisciplinary approach, the aim is to generate knowledge and evidence that contribute to improving the protection of women's rights and promoting an informed debate on the issue in society and the political sphere.

Problem formulation

Question

What would be the challenges and key considerations for implementing the right to abortion in Ecuadorian legislation and how could it impact the fundamental rights of women?

Investigation objectives

General objective

To analyze the challenges and key considerations for implementing the right to abortion in Ecuadorian legislation and assess its impact on the fundamental rights of women, to provide recommendations and perspectives for an effective and respectful implementation of this right in the Ecuadorian context.

Specific objectives

- Identify theoretical foundations on abortion and legal or non-legal processes, as well as relevant international and national policies and regulations, to thoroughly understand the existing legal framework and theoretical foundations of the right to abortion in the Ecuadorian context.
- Evaluate the social, cultural, and religious implications that could influence the implementation of the right to abortion in Ecuadorian society, considering different perspectives and existing opinions.
- Examine the experiences and lessons learned from other countries that have implemented the right to abortion to identify best practices, effective approaches, and measures to protect women's rights that could be applicable in the Ecuadorian context.
- Detail recommendations for the effective implementation of the right to abortion in Ecuador, through consultation and participation of various relevant authors, to ensure that the proposal guarantees the fundamental rights of women and responds to their reproductive health needs.

Hypothesis

The implementation of the right to abortion in Ecuadorian legislation, under an appropriate legal and regulatory framework, could contribute to ensuring the exercise of women's fundamental rights, reducing maternal mortality related to unsafe abortions, and promoting access to safe and quality reproductive health services. Furthermore, it is expected that the implementation of the right to abortion will bring about positive changes in Ecuadorian society by recognizing and respecting the autonomy and decision-making capacity of women regarding their health and maternity.

Methodological Framework

Research Focus

The research adopted a mixed approach, combining qualitative and quantitative elements. This approach will

allow for a comprehensive understanding of the social issue. The qualitative approach will provide an enriching insight into the experiences, perceptions, and opinions of women affected by this legislation, while the quantitative approach will enable us to support and contextualize these experiences with numerical data.

Descriptive-Explanatory scope

This will describe the fundamental manifestations of the abortion issue and its perception from both practical and theoretical perspectives. On the other hand, this study sought to establish the causes and conditions that lead to this interpretation.

In terms of explanatory scope, this study aims to understand the causes and consequences of restrictive abortion legislation and its impact on the fundamental rights of women. The reasons behind the existence of this legislation will be investigated, including political, social, cultural, and religious factors that influence its formulation and maintenance. Additionally, the implications of these restrictions on women's health, well-being, and autonomy will be explored.

Correlational scope

Within the framework of a correlational scope, an analysis of possible relationships between abortion legislation and relevant variables will be conducted. Indicators such as maternal mortality, the prevalence of unsafe abortions, and access to reproductive health services will be examined. This analysis will help identify potential associations and connections between legislation and health and well-being indicators for women in Ecuador.

Design of the investigation

The research design used in this study will be non-experimental and cross-sectional. This means that no controlled manipulations or interventions will be conducted, and the problem situation will be observed just as it exists in social reality.

Empirical Level Methods

1. **Observation method:** It was used to determine the regularities and characteristics of the abortion phenomenon in Ecuador and the international context.
2. **Measurement method:** It was used to measure the significant elements of the variables, legal system, and abortion.
3. **Literature review method:** Allowed the theoretical support of abortion and its different axiological, legal, and biological perspectives.

Theoretical level method

Lege Ferenga Method: This allowed for the analysis of the effectiveness of the legal framework within the context it regulates, taking into account the evolution of reality and new social demands.

Data processing method

Statistical method: It is used to describe and summarize the data collected in research. Its main objective is to present the data in a comprehensible and summarized manner, allowing for a general overview of the characteristics and patterns present in the data. This technique provides measures of central tendency, such as mean, median, and mode, as well as measures of dispersion, such as standard deviation and range, which help understand the variability of the data.

In the research on abortion and the fundamental rights of women in Ecuador, it will be applied as follows. First,

relevant data is collected using appropriate data collection methods, such as questionnaires or interviews. Then, the data is organized in a spreadsheet or statistical software, assigning a column to each variable of interest.

Techniques and instruments

Techniques

The technique to be used in this research is a structured survey. The structured survey consists of a series of pre-designed questions presented in a specific order to all participants. This technique provides a clear and systematic structure for collecting data efficiently. By using a structured survey, the way information is presented and responses are obtained can be standardized, facilitating the analysis and comparison of results.

Instruments Used

The instrument to be used is a questionnaire. The questionnaire is the means through which data for the structured survey are collected. It consists of a series of questions presented to the participants for them to answer. In this case, the questionnaire will contain questions related to abortion legislation, the fundamental rights of women, and their perception of access to reproductive health services.

The questionnaire may include different types of questions, such as multiple-choice questions, Likert scale questions, and single-response questions. These questions will be selected and formulated according to the research objectives and variables of interest. Additionally, open-ended questions may be included to gather additional qualitative information.

Ensuring that the questionnaire was clear, concise, and easily understandable for participants was a priority. It is also important to guarantee the confidentiality and anonymity of the responses so that participants feel comfortable providing honest information.

Conclusions

When contrasting the reality of the problem with the theoretical framework, it is important to identify the coincidences and inconsistencies between existing theoretical approaches and the specific problem in the research on abortion legislation and the fundamental rights of women.

There can be basic essence coincidences between the theoretical approaches and the problem at hand. Authors such as (Rivera, Chacón, & González, 2020) have emphasized the importance of ensuring women's access to safe and legal abortion services as a fundamental right to preserve their autonomy and health. These theoretical approaches support the need to critically examine legislation and its impact on women's rights.

It is also necessary to acknowledge the limitations and shortcomings of previous research in addressing the specific problem situation. Some studies may have focused on general analyses of abortion legislation without delving into the context and particularities of Ecuador. Other studies may not have adequately addressed the social and cultural consequences influencing perception and access to abortion in this region.

Overcoming these limitations and focusing on the specific reality of Ecuador when contrasting the theoretical framework with the problem is crucial. This involves critically examining the specific manifestations of legislation and its impact on the fundamental rights of women in this specific context. It is important to fill existing gaps in the literature and provide a more comprehensive and contextualized perspective on the problem.

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