

## **“THE RIGHT TO LIFE”**

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Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Very pertinent to the debate about reproduction rights is the right to life. Our Constitution says that the State “shall equally protect the life of the mother and the life of the unborn from conception.” Insofar as the “life of the unborn” is concerned, is this provision merely a reaffirmation of the prohibition of abortion? In order to answer this question, we must begin by looking at what abortion means in the Revised Penal Code (RPC). Article 256 of the RPC penalizes a “person who shall intentionally cause an abortion.” Although the law itself does not define what abortion means, commentators are clear about what it does mean. For instance, my Criminal Law professor, the late Luis B. Reyes, following local and Spanish commentators, says that under our law abortion means the expulsion of the fetus before the sixth month or before the term of its viability. If the fetus has reached viability, the crime is no longer abortion but infanticide. Similarly, abortion, as a penal offense prohibited by Canon Law (c. 1398), is defined as “any action resulting directly in the ejection of an immature fetus from the womb of the mother.”

It is worthy of note that House Bill 5043 (on reproductive health) says that “nothing in this Act changes the law on abortion, as abortion remains a crime and is punishable.” Does this therefore mean that HB 5043 intends to protect only a fetus already in the mother’s womb to the exclusion of the fetus before implantation? This is not clear in HB 5043 even if the Guiding Principles (Sec. 3) seem to suggest broader protection of rights not limited to life in the mother’s womb. At any rate we do have the constitutional provision which says that the State “shall equally protect the life of the mother and the life of the unborn from conception.” My understanding of this provision is that it protects life even before the fertilized ovum reaches the mother’s womb. Why do I say this? Our constitutional provision was discussed and crafted at a time when many were aware of the United States Supreme Court decision in *Roe v. Wade* which allowed abortion up to the sixth month of pregnancy. This is contrary to both our Penal Code and

Canon Law. The prevention of the adoption of the doctrine in *Roe v. Wade* was certainly one of the purposes of the provision. But Commission deliberations indicate that the provision goes beyond *Roe v. Wade*.

The unborn's entitlement to protection begins "from conception," that is, from the moment of conception. The moment of conception is popularly understood as the moment of fertilization which takes place outside the mother's womb. The intention of the Constitution is to protect life from its beginning, and the assumption is that the gradual development of human life begins at conception and that conception takes place at fertilization (even if medical literature seems to see conception as the moment of implantation). Although the constitutional provision does not assert with certainty when human life precisely begins, it reflects the view that, in dealing with the protection of life, it is necessary to take the safer approach. For this reason the Constitution commands that protection be given from conception, that is, from the fertilization when biological life begins. In other words, from the moment of fertilization there already is life. The life is neither that of the father nor of the mother. It is its own life. The life will not become human if it is not already human at fertilization. In fact, its personal characteristics would already be determined, as genetic science confirms.

From this it can be seen that the intention of the Constitution is to protect the "life" even before implantation in the uterus, that is, from the moment biological life begins. The constitutional intent, in other words, is to play it safe lest human life be destroyed and to impose the protection even before implantation in the uterus, even if there is as yet no "person" who can be the subject of rights. However, this is not to say that at no time may the life of the fetus be risked. It may, when balanced against the life, health and security of the mother—or what constitutional law calls "compelling state interest." This brings us to the question whether the reproductive health bill allows or even prescribes the use of birth control methods that have the effect of blocking a fertilized zygote from being implanted in the uterus or of expelling a fertilized zygote before implantation. This is a question which, while it has constitutional, religious and moral implications, must first be answered by medical science. Has the scientific aspect of the question been sufficiently explored in the course of the debates over the reproductive health bill? My impression is that it has not. The practical implication of this is that there may be a need to analyze scientifically what kind of contraceptive means are now being dispensed to determine whether they are merely contraceptive or already have the effect of preventing implantation and consequent loss of a fertilized zygote.