

Pleading the Belly: Sentencing of Convicted Pregnant Women under the Common Law

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Abstract : Under the Common Law, there was a procedure called pleading the belly which allowed a woman who had reached the advanced stage of pregnancy to receive a reprieve of her death sentence until after she had put to bed. The plea was replaced with a legislation, which provides that a pregnant woman would automatically have her death sentence commuted to life imprisonment with hard labour. This Common Law principle has been continued and enacted into law by the various countries where the Common Law is practiced. This paper takes a look at what it terms as Pregnancy Legislations in some selected Common Law countries such as United States of America, Canada, England and Wales, Ghana and India to examine the scope, procedure and effect of such legislations. The paper adopts a comparative study approach to ascertain the country with the widest scope, non-complicated procedure and far-reaching effects of the Pregnancy Legislations. It is observed that some legislations make provision for the conversion of death penalty to life imprisonment for capital offences and also prescribe non-custodial sentence for non-capital offences. There are other legislations that merely suspend the death penalty while the convict is found to be pregnant. In terms of the procedure, some of the legislations make the issue of pregnancy a question of fact to be determined by a jury and in other legislations, the trial judge makes that determination after the judge is satisfied on the question of the convict being pregnant. The effects of the Pregnancy Legislation are observed to be varying. Women who give birth in prison are highly at risk of having stillbirth. Most of the prisons do not have adequate facilities to support expectant and lactating mothers while in prison. It has also been observed that with the number of female prisoners increasing over the years, custodial sentence for convicted pregnant women has a wider societal effect. The paper identifies certain gaps left in some of the legislations which relate to the procedure to be followed after custodial sentence is suspended for a convicted pregnant woman. The time the accused person got pregnant- whether before her arrest or during trial- and the effect of the timing of the pregnancy are gaps left in some of the legislations. The paper argues that such gaps should be filled by the legislator to prevent accused persons taking undue advantage of the Pregnancy Legislations. It is further argued that if convicted pregnant women will have to spend time in prison at all for very heinous crimes, the prison facilities should be improved so that expectant and lactating mothers can comfortably care for their babies and themselves to prevent dire health consequences for such mothers and the society at a whole.

Keywords : sentence of pregnant women, custodial sentence, , pregnant women, ,common law

Conference Title : ICCLS 2024 : International Conference on Criminology, Law and Society

Conference Location : London, United Kingdom

Conference Dates : October 17-18, 2024