

Partial-Birth Abortion from the Perspective of Malaysian Criminal Law

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ABSTRACT

Abortion is an age old issue that has remained controversial and been subjected to political debates for decades in the United States of America. The passing of the Partial-Birth Abortion Act (S.3) can be regarded as a victory to the National Right to Life Committee(NRLC) and congressional pro-life leaders in the States after struggling for eight years to make Partial-birth Abortion illegal.¹ In response to this recent development in the United States, this article will attempt to discuss on the Partial-Birth Abortion procedure that has been banned by the Partial-Birth Abortion Act 2003 in order to determine the legal position in Malaysia should such procedure be carried out by the medical doctors in this country. The focus will be on the question of whether a doctor performing an abortion by relying on health reasons as stated in the exception of section 312 of the Penal Code, using the partial-birth abortion method, be liable to be prosecuted under section 315 of the same Code.

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¹ Johnson, Douglas, "*The Partial-Birth Abortion Ban Act- Misconception And Realities,*" <http://www.nrlc.org/abortion/pba/PBAall110403.html>



The Meaning of Abortion

Black's Law Dictionary defines abortion as:

*"The spontaneous or artificially induced expulsion of an embryo or fetus."*²

Abortion is also defined as:

*"The termination of pregnancy: a miscarriage or the premature expulsion of a fetus from the womb before the normal period of gestation is complete."*³

It is also considered to be an abortion when the uterus became empty prematurely and is also usually understood to be the termination of an unwanted pregnancy.⁴

Therefore, it can be concluded that abortion is a term used to describe a situation where the embryo or fetus is expelled prematurely from the uterus whether spontaneously or by induction, thereby terminating the pregnancy. In Malaysia the term used in the Penal Code is 'causing miscarriage.' However, notwithstanding the fact that the word abortion is nowhere to be found in the Code, in the case of *Public Prosecutor v Dr. Nadason Kanalingam*⁵, Justice Wan Mohammad had used the word abortion instead of miscarriage. So, is there a difference between the two terms? In the case of *Munah bte Ali v Public Prosecutor* the phrase "causes a woman with child to miscarry..." in section 312 of the Penal Code had been stated by Chief Justice Thompson to mean causing a woman to lose the product of conception, prematurely from her womb. Therefore it can be said that the term abortion and the term miscarriage carries the same meaning and in the United States of America the term abortion has been accepted to be synonym with the term miscarriage.⁶ That being the case, the term abortion will be used for the purpose of this article.

Abortion in the United States.

The law pertaining to abortion in America is as was decided in the landmark case of *Roe v Wade*⁷ which guaranteed the right of a woman to choose abortion. In *Roe*, the constitutionality validity of a Texas statute that prohibits abortion except where necessary

², Garner, Brian A.(ed), *Black's Law Dictionary*, West Group, 1999, p.5

³ Martin, Elizabeth A.(ed), *Oxford Dictionary of Law*, Oxford University Press, 4th edition, Oxford, 1997, p.2

⁴ Dr. R.M. Jhala, V.B. Raju, *Medical Jurisprudence*, Eastern Book Co. Lucknow, 1990, 5th, p.426

⁵ (1985) 2 MLJ 122

⁶ Keown, I.J., "Miscarriage: A medico-legal Analysis", (1984) *Criminal Law Review*, p.605

⁷ 410 U.S. 113 (1973)



to save the life of the mother was challenged. The decision reached by the Supreme Court of the United States was that the Texas statute violated the right of privacy of a woman as guaranteed by the Fourteenth Amendment's due process clause. The court was of the view that the Fourteenth Amendment's concept of personal liberty and restrictions upon state action includes a woman's decision whether to terminate her pregnancy or not.⁸ The decision in *Roe* legalized abortion in America. Justice Blackmun, in delivering the judgement for the majority, concluded:

"...the right of personal privacy includes the abortion decision..."

Nonetheless, it was also decided that at the compelling stage of the pregnancy, that is at the end of the first trimester (at approximately three months):

"a state may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health".

This means that for the period prior to the end of the first trimester, the woman and her physician is free to determine that the woman's pregnancy should be terminated, without any interference from the state. Be that as it may, the Justices also acknowledged the fact that a state also has an important and legitimate interest in protecting the potentiality of human life (i.e the fetus) and in this respect, the compelling point is at viability. The Court defined "viability" to mean the stage where fetus is, presumably, capable of meaningful life outside the mother's womb and this is usually when the fetus is at 26 weeks of gestation but may also be at 24 weeks of gestation and this stage is to be decided by the medical authority.⁹ Should a state be interested in protecting the life of the viable fetus, it may even proscribe abortion during the viability stage except when it is necessary to preserve the life or health of the mother.¹⁰

Nineteen years after *Roe v Wade*, the Supreme Court again had the opportunity to reiterate its opinion that the due process clause of the Fourteenth Amendment gave constitutional protection to a woman's decision to terminate her pregnancy before viability and that a law designed to further the state's interest in the life of the nonviable

⁸ *ibid*

⁹ *ibid*. (*Black's Law Dictionary* defined viable as "capable of living, especially outside the womb.") P.1559) see also: *Planned Parenthood of Central Missouri v Danforth*, 428 U.S. 52(1976) where it was held that the viability point is a question to be determined by a medical authority .)

¹⁰ *ibid*



fetus could not be constitutional.¹¹ The court held that the state may enact regulations for the purpose of protecting the health and safety of a woman seeking abortion but, health regulations that will, in effect, represent substantial obstacle to a woman who chose to terminate her pregnancy is considered to impose an undue burden on that right. As regards to the viable fetus, the Court in this case reaffirmed the decision in *Roe* that

*“subsequent to viability, the state in promoting its interest in the potentiality of human life may, if it chooses, regulate or even proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.”*¹²

It can be concluded therefore, that by virtue of the decision in *Roe v Wade* (affirmed by *Casey*), a woman may:

- i. choose to terminate her pregnancy during the first trimester without any state interference,
- ii. at the end of the first trimester and the period thereafter, a state may, if it chooses regulate abortion procedure with the purpose of preserving and protecting the health of the mother and
- iii. subsequent to viability, a state may regulate or proscribe abortion except where it is necessary to save the life or health of the mother.

The law, thus remained to be as has been decided in *Roe v Wade*¹³ which in effect had legalized abortion on demand.

Understanding Partial-birth Abortion

The method called partial-birth abortion was developed by the late Dr. James McMahon.¹⁴ Then a debate on this type of abortion was triggered by the circulation of an instruction paper on Partial-birth abortion written by Dr. Martin Haskell, an abortionist. The debate started due to the nature of the said abortion which has been defined in Merriam-Webster Medical Dictionary as:

¹¹ *Planned Parenthood of Southern Pennsylvania v Casey* 112 S.Ct. 2791 (1992)

¹² *Roe v Wade* 410 U.S., p.164-165

¹³ *ibid.*

¹⁴ “Why are partial-birth abortion performed?”, <http://www.nrlc.org/abortion/pba/whybaperformed.html>.



“An abortion in the second or third trimester of pregnancy in which the death of the fetus is induced after it has passed partway through the birth canal.”¹⁵

In this procedure, the doctor performing the abortion, delivers an unborn child’s body until only the head remains inside the womb, punctures the back of the child’s skull with a sharp instrument and sucks the child’s brain out before completing delivery of the dead infant.¹⁶

From the description given above, it can be seen that the partial-birth abortion is cruel and inhumane as during the procedure the child is still alive at that stage and is already partially extruded from the mother’s before being aborted.

In the year 2000, the Supreme Court held in the case of *Sternberg v Carhart*¹⁷ that the ban on the partial-birth procedure by a Nebraskan statute was unconstitutional as it violated the principle of law laid down in *Roe v Wade*.¹⁸ The majority of the Supreme Court affirmed that restrictions on previability abortions that lacks provisions on protection of woman’s health violated the decision in *Roe*¹⁹ and *Casey*.²⁰ The impugned Nebraska statute that banned partial-birth abortion reads as follows:

“No partial-birth abortion shall be performed...unless such procedure is necessary to save the life of the mother...”

The statute clearly does not have an exception for when the procedure is necessary to preserve the health of the mother, thereby making it unconstitutional. It was also held to be unconstitutional as it placed an undue burden on a woman seeking abortion to choose any method of abortion and thereby unduly burdening the right to choose abortion of a nonviable fetus.²¹ Accordingly the Court struck down the challenged Nebraska statute.

¹⁵ <http://www.intelihealth.com/IH/ihhhtIH/WSIH WOOD/9276/9276.html>. Abortions are usually performed during the second or third trimester period due to fetal abnormalities that are detected only at that stages of development and may also be due maternal health and life factors, that is, when the continuance of the pregnancy could threaten the life or health of the mother(<http://www.albany.net/truland/Itafaq.html>.)

¹⁶ See: Sec.2(1) of the Partial-Birth Abortion Ban Act 2003

¹⁷ (99-830) 530 U.S. 914(2000) per Justice Breyer for the majority.

¹⁸ 410 U.S. 113(1973)

¹⁹ *ibid*

²⁰ 112 S.Ct. 2791(1992)

²¹ *ibid*, per Justice O’connor



However, on November 5, 2003 President Bush signed *The Partial-birth Abortion Ban Bill* into law²², making it the first federal law that impose restrictions on any method of abortion since *Roe v Wade*.²³ The *Ban Act 2003* (S.3) provides that :

*“A physician who...knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined...or imprisoned not more than 2 years, or both...This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother...”*²⁴

The health ground is notably absent in this provision. This is due to the fact that, in its findings, the Congress stated that there was no evidence medical that partial-birth abortion procedure are safe or safer than other abortion procedure,²⁵ and the Congress also found, based on evidence, that this procedure is never medically necessary to preserve the health of a woman.²⁶ The partial-birth abortion procedure blurs the line between abortion and infanticide in the killing of a partially born child just inches from birth and therefore should be banned.²⁷

Thus, the Act 2003 prohibits partial-birth abortion from being performed in terminating a pregnancy. The effect of the said Act is that partial-birth abortion carried out in order to preserve the health of the mother will be an offence. Partial-birth abortion will not, however, be a crime if it was done to save the life of the mother.

This federal law banning partial-birth abortion is at present being challenged by three states in the United States. The states are California, New York and Nebraska. The federal law banning partial-birth abortion was challenged for being unconstitutional as, it was argued, to be too broad that it curtails the availability of second trimester abortions, a period considered absolutely legal under *Roe v Wade*.

As may be recalled, the principle stated in *Roe* was that a law designed to further the state's interest in the life of the fetus which imposes an undue burden on the woman's decision to choose pre-viability abortion, is deemed to be unconstitutional, meaning that by prohibiting partial-birth abortion method, the Act has put an obstacle on a pregnant

²² “Bans abortion procedures: The so-called Partial-Birth Abortion Ban Act.”

<http://www.prochoice.org/so9issue/200411054.shtml>.

²³ 410 U.S. 113(1973)

²⁴ ss.1531(a)

²⁵ Sec.2(13)(B) of Act 2003

²⁶ Sec.2(13)(E) of Act 2003

²⁷ Sec.2(13)(O) of Act 2003



woman's right to choose to terminate her pregnancy. It was also argued that the law is unconstitutional as it lacks the exception for the preservation of maternal health. This means that if a doctor is of the opinion that partial-birth procedure is necessary to preserve the health of a woman seeking abortion, he is prevented from performing such procedure due the omission of a health ground in the *Partial-birth Abortion Ban Act 2003*.²⁸ Under the Act partial-birth abortion is banned and whether the fetus is viable or not is not an issue. It would be interesting to see the outcome of this challenge.

That being the law in the United States of America, the writer will now discuss briefly on the English law relating to abortion before proceeding to examine the law on abortion in Malaysian as provided in the Penal Code. The discussion will be solely for the purpose of determining whether under the English law and the Malaysian Penal Code a partial-birth abortion would be an offence if it were ever performed.

The English law on abortion.

Under English law, it is a crime to procure an abortion under the Offences Against the Person Act 1861²⁹. Nonetheless abortion will not be an offence if it was done based on the any of the grounds set out in section 1 of *the Abortion Act 1967*³⁰ as amended by the *Human Fertilization and Embryology Act 1990*, for instance, where it is necessary to prevent grave permanent injury to the physical and mental health of the mother or when it is done with the purpose to save the life of the pregnant woman. Section 1(1) of the *Abortion Act 1967* requires that the termination be carried out only if two medical practitioners are of the opinion that it is necessary and further, the opinion must be formed in good faith.

The writer is of the opinion, however, that the correct law to be applied in a partial-birth abortion, should it be performed in the United Kingdom, would be the *Infant Life(Preservation) Act 1929*. This is mainly based on the opinion of Professor Glanville Williams that abortion is committed only when the fetus is killed in the womb.³¹ The law on abortion is inapplicable when the fetus was no longer inside the womb.³² In a partial-birth abortion procedure, as have already been explained before, the doctor will induce

²⁸ "Bans on Abortion Procedures: The so-called Partial-Birth Abortion Ban Act"

²⁹ Section 58 and section 59 of the Act 1861

³⁰ Section 6 of the Act provides that the phrase "the law relating to abortion" in section 1(1) of the same Act refers to sections 58 and 59 of The Offences Against the Person Act 1861

³¹ Williams, G., "*Textbook of Criminal Law*, 2nd edition, Stevens & Son, London, 1983, p.290.

³² The offence cannot be homicide as the child who has not been wholly extruded from the mother's body is not legally a human being for the purpose of the English law of homicide. There must be complete extrusion.; see: William, W., *Criminal Law*, Longman, London, 1998, p.363



the mother to start labour, the fetus will then be in the birth canal when the doctor pulled the body out, leaving only the head inside the birth canal. The partially extruded child will then be killed. Due to the nature of the procedure, we may interpret that the unborn child is killed during the process of being born, henceforth making it a crime of child destruction under the *Infant Life(preservation) Act 1929*. We shall see that the *Infant Life(Preservation) Act 1929* was enacted to deal with the offence of child destruction. For this Act to operate the unborn child must be partially extruded from the body of its mother when it was killed.³³ Section 1(1) of the Act 1929 stated that the offence is committed ;

“by any person who, with intent to destroy the life of a child capable of being born alive, by any willful act causes a child to die before it has an existence independent of its mother.”

Under this section it will not be an offence³⁴ if the act was done in good faith, to preserve the life of the mother.

Hence, the writer is of the opinion that it can be safely concluded that under the English law, a partial-birth abortion procedure where the unborn child was aborted after it was partially extruded from the mother’s body will not be an offence of abortion, but instead an offence of child destruction unless it was carried out with the purpose of saving the life of the unborn child’s mother.

Another requirement that has to be fulfilled before this Act is applicable is that the unborn child must be capable of being born alive when it was destroyed. Section 1(2) of *Infant Life (Preservation) Act 1929* provides a presumption that a child is capable to be born alive after the 28th week of gestation or approximately on the 7th month.³⁵ The issue of whether a child is capable of being born alive is a question of law to be decided by the court.³⁶ In the case of *C v S*,³⁷ Lord Donaldson held that:

³³ *ibid.*

³⁴ proviso in section 1(1)

³⁵ It may be recalled that partial-birth procedure is usually performed in the second and third trimester of pregnancy. The 28th week period stated in the above-mentioned sub-section (2) falls under the third semester stage.

³⁶ Smith, J.C., *Smith & Hogan Criminal Law*, Butterworths LexisNexis, 10th. Edition, 2002, p.398

³⁷ (1987) 1 All E R 1230



*“a child is capable of being born alive if it was capable of independent or assisted breathing.”*³⁸

Therefore His Lordship opined in the light of the evidence brought forward that a fetus at the 18 to 21 weeks of development does not have this capability and cannot be considered as “capable of being born alive” for the purpose of the 1929 Act³⁹. Further in *Rance v Mid Downs Health Authority*, Justice Brook held that a 26 week old fetus is capable of being born alive under the terms of the 1929 Act.

A partial-birth abortion is usually performed during the second and third trimester stage of pregnancy, that is, between the 13th week until full term at 42 weeks. From the discussion above it is clear that if partial-birth abortion is performed upon a fetus at the 22 week stage of development and above, then the doctor will be committing an offence of child destruction under the *Infant Life (Preservation) Act* unless it was done in good faith, to save the life of the mother. A doctor will also be saved from being charge under section 1 of *Infant Life (Preservation) Act* if he can prove that the act was *committed, in good faith, based on one of the grounds in section 1 (1) Abortion Act 1967* which among others, includes a health ground. Section 5(1) of *the Abortion Act 1967* as amended by the *Human Fertilization and Embryology Act 1990* states that:

“No offence under {the 1929 Act} shall be committed by a registered practitioner who terminates a pregnancy in accordance with the provisions of {the Abortion Act 1967}.

By virtue of this amended section, it is not an offence for a doctor who complies with the terms stated in the *Abortion Act 1967* to cause the death of a child capable of being born alive. In short, it will be a crime of child destruction only if the death of the unborn child is caused by a doctor not complying with the 1967 Act and also the proviso under section 1(1) of the 1929 Act.^{40 41}

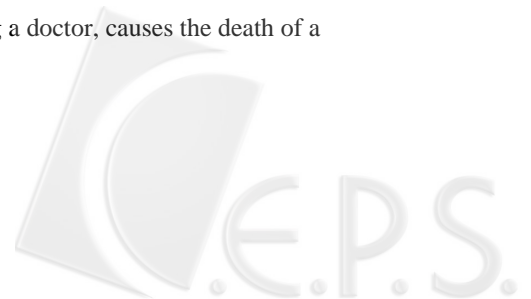
The question that comes to mind is what will be the relevant statute if a partial birth abortion is carried out towards a fetus that is not capable of being born alive, for instance, a 20 week old fetus. This is due to the fact that partial-birth abortion is usually performed

³⁸ *ibid* p. 1241

³⁹ *ibid*

⁴⁰ Smith, JC., “*Smith & Hogan Criminal Law*”, p.399

⁴¹ The 1929 Act also applies to situations where any other person, not being a doctor, causes the death of a child capable of being born alive with the purpose of killing it.



during the second trimester and this period started from the end of the first 12 weeks until the end of 27 weeks of gestation. Can the *Offences Against the Person Act 1861* on the offences pertaining to abortion be resorted to, considering that a partial-birth abortion is not abortion under the English law but rather an offence of child destruction? This is, to the writer a grey area that is will only be settled when the need arises.

The Malaysian Scenario⁴²

Section 312 of the *Penal Code* provides that :

“Whoever voluntarily causes a woman to miscarry shall be punished with imprisonment for a term which may extend to three years, or, with fine, or with both; and if the woman is quick with child, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

This section makes any act of causing an abortion a crime under the *Penal Code*. The reading this section also shows that there is a difference in terms of the punishment relating to imprisonment. If the abortion is done before quickening, the punishment is three years imprisonment but if it is done on a fetus who has quickened, the penalty is heavier, that is, seven years of imprisonment.⁴³ The harsher sentence shows that under the law, abortion done on a fetus or unborn child who has quickened is more serious compared to abortion of an unborn child who has not.⁴⁴

Nonetheless this section contains an exception for a medical practitioner who has to perform an abortion:

“This section does not extent to a medical practitioner registered under the medical Act 1971 who terminates a pregnancy of a woman if such medical practitioner is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the mental and physical health of the pregnant woman, greater than if the pregnancy is terminated.”

⁴² In this article attempt will not be made to discuss on the applicability of section 299 of the Penal Code as it will be outside the scope of the article.

⁴³ A fetus is presumed to have quickened during the 16th to the 20th week of gestation , *Queen Emperor v Ademma*, (1886) ILR Mad.319

⁴⁴Gaur, K.D. “ Abortion and the Law in the Countries of the Indian Sub-continent, ASEAN Region, United Kingdom, Ireland and the United States of America, *Koleksi Undang-undang Sempena 25 tahun UKM*, p.108

Therefore, if a doctor is of the opinion, formed in good faith, that in order to save the life of the pregnant or to prevent injury to the mental or physical health of such woman, abortion has to be carried out, he can do so without any apprehension of being charged under section 312 of the *Penal Code*.

Nevertheless, as the term used in section 312 of the *Code* is “miscarry”, the connotation is that section 312 will only apply if the abortion causes the unborn child to die while still inside the womb.⁴⁵ The question is then, whether performing abortion using the partial-birth method which requires the body of the child to be partially extruded from the body of its mother will be an offence under the first limb of section 315 of the same *Code*. Therefore the issue that will be the focus here is the applicability of section 315 of the *Penal Code* to a situation where a doctor performed a partial-birth abortion procedure, solely to prevent injury to the mental or physical health of the pregnant woman as allowed by the above-mentioned exception.

Section 315 (first limb) reads as follows:

“Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive,...and does by such act prevent that child from being born alive, if such act is not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to ten years, or with fine, or with both.”

It is submitted that doctors performing partial-birth abortion can be found guilty of an offence under the first limb of section 315. This is because the phrase “before the birth of any child” used in the section implies that it covers a situation where the unborn child is prevented from being born after it has partially left the body of its mother, but before full birth has occurred. It is pertinent to understand at this juncture, what is actually meant by birth. Birth has been defined to mean:

⁴⁵ see footnote no.31



“The complete extrusion of a newborn baby from the mother’s body.”⁴⁶

Complete extrusion means that the child is completely outside of the body of its mother but it is not necessary that the umbilical cord have not been severed.⁴⁷ This means that as partial-birth abortion procedure causes the death of an unborn child after it has partially left the mother’s body (except for the head that is purposely left inside the birth canal), this part of section 315 has been fulfilled as birth has not occurred.

Section 315 also requires that the act done had in fact prevent the child from being born alive. Born alive has been interpreted to mean that “ the child must be in a living state after wholly acquitted from the body of its mother.”⁴⁸ In a partial- birth abortion, a child is already dead when it is pulled out from the mother’s body as its brain had been sucked out during the procedure. This requirement has thus, been fulfilled.

The next question to ask is whether the age of the unborn child is relevant in determining the applicability section 315. Gaur, in his book the *Penal Code of India* (which is pari material with our *Penal Code*) opined that section 315 aims to protect fetus or unborn child of 6 months (approximately 24 weeks) and above.⁴⁹ The procedure of partial-birth abortion, as have already been mentioned, is usually performed in the second and third trimester. So does that mean that partial-birth abortion will be considered an offence under section 315 only if it is done when the unborn child is at 24 weeks of gestation and above? What will be the position if the unborn child is less than 24 weeks ?

It is submitted that as there is no mention of the stage of development of the unborn child for the section to operate, it is safe to presume that this section covers partial-birth abortion procedures carried out on an unborn child starting from the beginning of the second trimester. This presumption is based on the fact that unlike section 1(1) of the *Infant Life (Preservation) Act 1929* applicable in the United Kingdom, section 315 does not require the unborn child to be capable of being born alive. Capable to be born alive requires an unborn child to be capable of breathing independently or with assistance, if born alive and according to the case of *C v S*⁵⁰, an unborn child of 18th to 21st week is

⁴⁶ Black’s Law Dictionary, p.162

⁴⁷ William, W, “ Criminal Law” p.365

⁴⁸ Cecil Turner, J.W, “*Kenny’s Outline of Criminal Law*”, 16th.edition, 1952.(from *Black’s Law Dictionary*, p.162)

⁴⁹ A fetus at this stage is considered non-viable according to *Roe v Wade* and not capable of being born alive according to the decision in *Rance v Mid-Downs Health Authority*.

⁵⁰ (1987) 1 All E R 1230



not capable of that. The decision in *Rance v Mid-downs Health Authority*⁵¹ stated that at 26 weeks of gestation an unborn child can be considered as capable of being born alive. Therefore even if the unborn child is not capable of being born alive when partial-birth abortion is performed, section 315 still applies.

However, it is to be noted that a doctor will be exonerated from a charge under section 315 if he can prove that the abortion was done in good faith for the purpose of saving the life of the pregnant woman as provided in the same section. This exception is not dissimilar to the Partial-birth Abortion Ban Act 2003 that allows the procedure to be performed if it is necessary to save the life of the mother. In this sense, the position under the English law is broader as partial-birth abortion will not be an offence of child destruction under the *Infant Life Act 1929* if it is necessary to prevent injury to the physical or mental health of the woman.⁵²

Regarding punishment, this section provides that a person found liable under this section shall be punished with ten years imprisonment or fine or both. The heavy punishment indicates that this section aims to cover offences that are more serious compared to section 312 of *Penal Code*. Partial-birth abortion is inhumane and cruel and the inhumanness of this procedure calls for severe punishment.

Conclusion

From the above discussion, it can be concluded that section 315 of the *Penal Code* is applicable in dealing with the offence of performing partial-birth abortion not for the purpose of saving the life of the pregnant woman. A doctor who performed partial-birth abortion in Malaysia in order to prevent injury to the mental and physical health of a pregnant woman by relying on the exception of section 312 of the *Penal Code*, may in fact be committing an offence under section 315 of the same *Code*. However as no case has ever been reported on the practice of partial-birth abortion in Malaysia, the issue of partial-birth abortion will remain an academic discussion.

⁵¹ (1991) 1 All E R 801

⁵² see section 1(1)(a) and (b) of the Abortion Act 1967 as amended by section 37 of the Human Fertilization and Embryology Act 1990

