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# Abortion in Italy: Forty Years On

Elena Caruso<sup>1</sup> 

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## Abstract

This comment considers the Italian Law 194 on abortion forty years after its approval in 1978 and it focuses on how its meaning has emerged as a result of its interpretation and application over that forty-year period.

**Keywords** Abortion · Italy · Law 194 · Abortion law reform · Conscientious objection · Italian feminism

## Introduction

This comment considers the Italian Law 194 forty years after its approval in 1978.<sup>1</sup> Law 194 legalised abortion in the country as the result of a powerful struggle for safe abortion by the Italian women's movement in the 1970s. This short comment focuses on the interpretation and application of the law over this forty-year period.

At first glance, Law 194 might appear liberal and permissive. However, in practice, it has failed to guarantee access to abortion for women in Italy, and the fulfilment of their right to health. It is important to consider why this is the case and to understand the extent to which Law 194 was the result of a difficult compromise among different actors, including within the Italian women's movement. To this end, I offer a brief account of the historical background of Law 194 by focusing on the women's movement struggle in the 1970s. Then, I will outline the current application of Law 194, paying particular attention to the problem of conscientious objection. Before drawing my conclusions, I will take into account how the debate on abortion in Italy sits within the present socio-political framework.

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<sup>1</sup> Legge 22 maggio 1978, n. 194 'Norme per la tutela sociale della maternità e sull'interruzione volontaria della gravidanza' (Gazzetta Ufficiale Serie Generale n. 140 del 22 maggio 1978).

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## The 1970s

In Italy, the first women-only consciousness-raising groups were founded in the 1970s. These women—initially, gathered in their homes—started to talk about issues such as maternity and sexuality (Baeri 2008a, 21–46). The method used in discussions was to ‘start from their own experience’ (*partire da sé*), to release themselves from the dominant male culture. The Italian feminist Carla Lonzi defined this approach as *deculturizzato*, which may be explained as throwing off the shackles of imposed cultural meanings (Lonzi 2010, 36). In these collectives, feminists began to discover their bodies and also to practise self-help (a self-intimate examination made using a speculum). Besides, some women started to open self-organised feminist health centres (Jourdan 1976; Percovich 2005). These feminist health centres became a place where women could speak about their sexuality with other women, where they could get information about contraceptives, where they could find support during their pregnancy and also obtain a clandestine abortion (which was a crime in Italy at that time).<sup>2</sup>

In the context of the Italian women’s movement of the 1970s, the struggle for safe abortion emerged (Lussana 2012, 56–66). This struggle was also the first opportunity to discuss the relationship between feminism and the law. The Italian women’s movement was fragmented on the question of what part law should play in the agenda for safe abortion (Pitch 1992; Lussana 2012, 66–68). It is possible to trace two main divergent positions. The first one stands for emancipation as a concept that implies a certain involvement of law usually in terms of equality and it ‘asks’ for a politics of legal reform. This strand of the women’s movement demanded the right to publicly funded abortion and advocated for legislation that would allow women to obtain abortions in public hospitals. The *Unione Donne Italiane* (Italian Women’s Union, UDI), which was politically close to the former Italian Socialist Party (PSI) and Communist Party (PCI), adopted this position, and is to this day representative of this tradition in Italy.

On the other hand, a part of the women’s movement advocated for the decriminalisation of abortion. The *Movimento di liberazione della donna* (Women’s liberation movement) which was politically close to the former Italian Radical Party (PR) was a component of this second group (Pisa 2012). Even more politically radical was the position of Carla Lonzi, the main exponent of Italian separatist feminism and co-founder of one of the first feminist collectives in the country, *Rivolta Femminile* (Female Revolt), who pointed out that an abortion law would not be a solution to the abortion issues for women and to the colonisation of female sexuality by patriarchy (Rivolta Femminile 1971).<sup>3</sup> These feminists opposed the notion of a

<sup>2</sup> Abortion was a crime under Articles 545–555 of the Italian Penal Code which protected the integrity and health of the lineage (Title X); these Articles were abrogated by Article 22 of Law 194 in 1978. In 1973, there was the first trial involving a case of abortion which had an impact in the mass media. The prosecution was against the 17 year-old Gigliola Pierobon, who was supported by feminist groups (Scire 2008, 47).

<sup>3</sup> A similar position was expressed in 1975 by some feminists of the collective of Via Cherubini in Milan who did not support the demonstrations for free abortion because they were “working on a different

‘right’ to abortion and refused to call for a patriarchal law that regulated women’s bodies. In 1971, *Rivolta Femminile* wrote:

Women abort because they get pregnant. But why do they get pregnant? (...) The man left the woman alone in front of a law which forbids her to have an abortion: alone, denigrated and unworthy of society. One day, he will end up by leaving the woman alone in front of a law which will not forbid her to have an abortion: alone, gratified and worthy of society. But women are asking themselves: ‘For whose pleasure did I get pregnant? For whose pleasure am I having an abortion?’ This question contains the germ of our liberation (...).

The decriminalisation/legalisation dilemma was thus a very thorny one for Italian feminists, who were sharply divided. The tension of those years emerges clearly in the words of the Italian feminist and historian Emma Baeri:

The decriminalisation/legalisation dilemma was internal to the feminist movement, which split up and merged into new forms on this issue: I think that those divisions were painful but useful, and the reasons behind that dilemma were and remain indivisible, because the relationship among the female body, law, and rights is problematic at its origins. Maybe this problematic relationship cannot be removed, and it is unsolvable in the current symbolic, juridical and political order, but it is a problem to be faced (...). In those years, I advocated for the legalisation (...). Then a transversal movement was born, and it included not only women of the political parties but also women of various backgrounds and experience. I called that aggregation a ‘lesbofeminist women’s movement’ (...). Of course, there were many doubts and disagreements at that time, but even if reluctantly we defended that law, which had many faults and some merits (2008b).

Given the variety of feminist positions, it is easy to imagine how the path to legalisation of abortion in Italy was littered with obstacles. These obstacles become still more numerous when we consider the other relevant actors involved in this debate such as the Roman Catholic Church, the pro-life movement, the political parties, and state institutions (Scirè 2008). This complicated history also involves other important, preliminary steps that affected women’s rights in the 1970s in Italy, such as the introduction of divorce, the reform of family law and the new law on health centres.<sup>4</sup> Two decisions of the Italian Constitutional Court also played an important role: the judgment No. 49 of 1971 that affirmed the illegitimacy of the ban on information about contraception (Article 553 of Italian Penal Code); and judgment No. 27 of

Footnote 3 (continued)

political approach to the problem of abortion” which put masculine sexuality into question (Collective of Via Cherubini 1975).

<sup>4</sup> Legge 1 dicembre 1970, n. 898 “Disciplina dei casi di scioglimento del matrimonio” (Gazzetta Ufficiale Serie Generale n. 306 del 3 dicembre 1970); Legge 19 maggio 1975, n. 151 “Riforma del diritto di famiglia” (Gazzetta Ufficiale Serie Generale n. 135 del 13 maggio 1975); Legge 29 luglio 1975, n. 405 ‘Istituzione dei consultori familiari’ (Gazzetta Ufficiale Serie Generale n. 227 del 27 agosto 1975).

1975 that declared the partial unconstitutionality of the crime of “self-provoked abortion” (Article 546 of Penal Code).<sup>5</sup>

In judgment No. 27 of 1975, Italian judges used a balancing test between two opposing interests: the right to health of the mother (protected by Articles 31.2 and Article 32.1 of the Italian Constitution) and the ‘life’ of the unborn (indirectly protected by Articles 2 and 31.2 of the Italian Constitution). The Constitutional Court stated that: “No equivalence exists at this time between the right, not only to life but also to health, of the one who is already a person, as the mother, and safeguarding of the embryo which has yet to become a person.” Therefore, it admitted that pregnancy could be interrupted when the mother’s health is in danger.

In the same year, 1975, abortion was legalised in France (Halimi 1979). This and other events accelerated the debate about abortion law reform in Italy, with the new law finally promulgated in 1978.<sup>6</sup> In 1981 there were two referendums that proposed abrogating and changing Law 194, although from very diverse positions. One referendum was promoted by the Radical Party; the other by the pro-life movement with the support of the Roman Catholic Church (Conti 1981). However, both referendums failed, and the law was “saved” (Lussana 2012, 108).

## The Italian Law 194

Law 194 reflects the obstacles and battles of the 1970s and the signs of historical compromise mark both its provisions and its ambiguous title: ‘Norms on the Social Protection of Motherhood and the Voluntary Termination of Pregnancy.’ Moreover, the aim of Law 194 is clarified by Article 1, which provides that: “The State... recognises the social value of maternity and protects human life from its beginning.”

Law 194 permits the voluntary interruption of pregnancy during the first 90 days when continuing the pregnancy poses a threat to the physical or mental health of the woman (Article 4). After the first 90 days, the interruption of a pregnancy is allowed when there is a serious risk to the woman’s life or when a serious abnormality or malformation of the foetus is diagnosed, which could compromise the woman’s physical or mental health (Article 6). According to Law 194, a certificate by a physician (from a counselling centre, a medico-social agency or a facility of the woman’s choice) must confirm the pregnancy and provide the reason for the woman’s desire to interrupt the pregnancy. If the request is evaluated as ‘urgent’, the doctor gives a document to the woman that allows her to end the pregnancy immediately. If the request is not evaluated as ‘urgent’, the physician signs a document attesting that the woman is pregnant and asking to interrupt her pregnancy, and “invites her to reflect

<sup>5</sup> Corte Costituzionale, sentenza 16 marzo 1971, n. 49; Corte Costituzionale, sentenza 18 febbraio 1975, n. 27.

<sup>6</sup> For instance, in 1976, the Italian Government enabled pregnant women in the area of Seveso to access a therapeutic abortion, due to the exposure of the local population to dioxins in the ‘Seveso disaster’ (Cossutta 2019).

for seven days.” Only then, with this document, the woman may obtain an abortion (Article 5).

This procedure becomes more complicated when a woman under 18 years of age is involved. In this case, Law 194 requires the consent of the person having parental authority over the woman or alternately the approval of a judge (Article 12). Law 194 provides that abortion services are publicly funded and can be performed only in public hospitals or in authorised public-funded health centres (Article 8). There is an administrative sanction for those women who break the rules, for instance, by self-managing abortions with pills or seeking private assistance for self-funded abortions (Article 19). In sum, according to Law 194, access to abortion is a highly circumscribed right in terms of time limits, the need for medical consent, and the imposition of waiting periods.

## A Denied Right to Abortion in Italy? The Problem of Conscientious Objection

Even where a pregnant woman becomes entitled to obtain an abortion, according to Law 194, a further barrier to abortion is the lack of abortion providers. Indeed, Article 9, relating to the conscientious objection of medical personnel, has emerged as a serious obstacle to the effective exercise of the right to abortion over the past forty years. According to this provision, it is very easy for doctors to declare themselves as conscientious objectors, as this only requires a statement to the provincial medical officer. Moreover, this declaration can be submitted or cancelled at any time. Today in Italy, 68.4 per cent of gynaecologists declare themselves conscientious objectors (Ministero della Salute 2019, 46).

The seriousness of this phenomenon is reflected in the inclination of these pro-life gynaecologists in refusing to take care of a pregnant woman even when Law 194 does not allow them to object. Indeed, Article 9.5 provides that the conscientious objection cannot prevent a doctor from performing an abortion when the woman’s life is at stake. This provision is one of the issues in dispute in the ‘Milluzzo trial’, which started in September 2019. In October 2016 a young woman in the fifth month of pregnancy, Valentina Milluzzo, died of sepsis after miscarrying twins in a hospital in Catania (a city in Southern Italy). According to the woman’s relatives, the gynaecologist, who was a conscientious objector, refused to perform an abortion of the second twin after the loss of the first foetus. He remarked that “as long as it [the foetus] is alive, I will not intervene.”<sup>7</sup> More recently, in November 2018, in Giugliano (a large town in Southern Italy) another gynaecologist, claiming to be a conscientious objector, was dismissed because he omitted to assist a woman whose life was endangered by a miscarriage.<sup>8</sup>

<sup>7</sup> See the news in the UK’s press: “Italy abortion row as woman dies after hospital miscarriage,” *BBC*, 20 October 2016. <https://www.bbc.co.uk/news/world-europe-37713211>. Accessed 15 November 2018.

<sup>8</sup> “Rifiuta le cure a una donna che ha avuto un aborto spontaneo. Licenziato medico obiettore,” *La Repubblica*, 22 November 2018. [https://www.repubblica.it/cronaca/2018/11/22/news/\\_aborto\\_spontaneo\\_non\\_ti\\_curo\\_licenziato\\_il\\_medico\\_obiettore-212295607/](https://www.repubblica.it/cronaca/2018/11/22/news/_aborto_spontaneo_non_ti_curo_licenziato_il_medico_obiettore-212295607/). Accessed 27 November 2018.

There are whole geographical areas in Italy where the right to abortion relies on the presence of a single (non-objecting) doctor. This is the case of the entire *Regione Molise*, for example (Ministero della Salute 2019, Table 28). Consequently, if this doctor is unavailable, for instance, due to illness, holiday or retirement, then the service is interrupted. In Trapani (a city in the South), in 2016, the only doctor performing abortions retired, and abortion services ceased operating.<sup>9</sup> Similarly, in 2017, the *Confederazione Generale Italiana del Lavoro* (one of the biggest trade unions in Italy) drew attention to the case of a pregnant woman in Padua (a city in the North) whose request for an abortion was rejected by 23 public hospitals.<sup>10</sup>

Some commentators observe that the Roman Catholic Church has played, and still plays, a significant political role in Italy in this respect (Hanafin 2009; Balzano 2015). For instance, when Law 194 was promulgated in 1978, Pope Paul VI intimated that doctors ought to be objectors, threatening them with automatic ex-communication (*latae sententiae*) because practising abortion is considered an atrocious sin for a Catholic (Scirè 2008, 174–189). In the encyclical *Evangelium vitae* of 1995, Pope John Paul II writes:

I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being. (...) No circumstance, no purpose, no law whatsoever can ever do licit an act which is intrinsically illicit since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church (Holy Sea 1995).

Furthermore, more recently, on 10 October 2018, Pope Francis compared abortion to “hiring a hitman to resolve a problem” (Giuffrida 2018).

Although women face many obstacles in order to access abortion services in Italy, Law 194 prohibits them from seeking an abortion from a private doctor or self-managing their own termination using pills.<sup>11</sup> As mentioned above, there is an administrative sanction for women who interrupt their pregnancy without observing Articles 5 and 8 of Law 194, which regulates that the procedure can only be conducted within an authorised public-funded health centre (Article 19.2). Since 2016, this sanction is pecuniary, with a fine of 5000 to 10,000 Euros.<sup>12</sup> Before this modification, the violation of Law 194 was a crime for the woman, punishable by a penalty which amounted up to 51 euros. Women’s rights activists criticised this decision

<sup>9</sup> “L’unico medico non obiettore va in pensione: stop agli aborti all’ospedale di Trapani,” *La Repubblica*, 16 June 2016. [http://palermo.repubblica.it/cronaca/2016/06/16/news/l\\_unico\\_medico\\_non\\_obiettore\\_in\\_pensione\\_stop\\_agli\\_aborti\\_all\\_ospedale\\_di\\_trapani-142163951/](http://palermo.repubblica.it/cronaca/2016/06/16/news/l_unico_medico_non_obiettore_in_pensione_stop_agli_aborti_all_ospedale_di_trapani-142163951/). Accessed 15 November 2018.

<sup>10</sup> “Aborto, denuncia Cgil: “Donna respinta da 23 ospedali, soluzione solo dopo nostro intervento,” *La Repubblica*, 1 March 2017. [http://www.repubblica.it/cronaca/2017/03/01/news/padova\\_aborto\\_respinta\\_23\\_ospedali-159526952/](http://www.repubblica.it/cronaca/2017/03/01/news/padova_aborto_respinta_23_ospedali-159526952/). Accessed 15 November 2018.

<sup>11</sup> 17.8 is the percentage of medical abortion in Italy (Ministero della Salute 2019, 4). Medical abortion is admitted only within the first 7 week of pregnancy and in hospital.

<sup>12</sup> Decreto legislativo 15 gennaio 2016, n. 8 ‘Disposizioni in materia di depenalizzazione, a norma dell’articolo 2, comma 2, della legge 28 aprile 2014, n. 67’ (Gazzetta Ufficiale Serie Generale n. 17 del 22 gennaio 2016).

because the Government increased the sanction for women obtaining an abortion outside the authorised structures, without first guaranteeing the service within public-funded hospitals.<sup>13</sup>

Confirmation that Italian women's rights have been denied by Law 194 comes from international human rights monitoring bodies. The European Committee of Social Rights (ECSR), the monitoring body of the European Social Charter (ESC) within the Council of Europe, observed the noncompliance of Italy to the ESC in two decisions in 2014 and 2016.<sup>14</sup> In both these cases, the ECSR held that there had been a violation of the right to health (Article 11 ESC) because of the difficulties encountered by women in accessing abortion services. Moreover, the ECSR found a violation of Article 11 ESC in conjunction with Article E ESC (non-discrimination) due to the fact that there was multiple discrimination between women on the grounds of regional and socioeconomic status. Indeed, depending on the area where women live, they may be forced to travel to another region or even abroad in order to obtain a lawful abortion.<sup>15</sup>

A similar position has been taken by some UN Human Rights treaty-based bodies, including the Human Rights Committee. In 2017, in its concluding observation on the implementation of the International Covenant on Civil and Political Rights in Italy, the Human Rights Committee expressed concern about the rising number of doctors who are conscientious objectors that "paralyse" access to abortion.<sup>16</sup> It also observed the risk of an increase in the number of illegal abortions as a result of the lack of availability of formal health services. Besides, the Human Rights Committee highlighted the relevance of time and proximity in accessing abortion services, in order to guarantee the right to health for women. The importance of this is that Law 194 has a discriminatory impact, affecting those who live in the South and rural areas more harshly than those who live in cities or certain regions (Bo et al. 2015). The CEDAW Committee and the Committee on Economic, Social and Cultural Rights have reached similar conclusions and *Magistratura Democratica* (an association of Italian magistrates) described the right to abortion in Italy as a "denied right."<sup>17</sup>

<sup>13</sup> See the news on the Italian newspaper *La Repubblica*: "Aborto clandestino, sul web dilaga la protesta contro la multa aumentata 200 volte", 24 February 2016. [https://www.repubblica.it/salute/2016/02/24/news/aborto\\_clandestino\\_su\\_web\\_dilaga\\_protesta\\_contro\\_maxi-multa-134164143/?refresh\\_ce](https://www.repubblica.it/salute/2016/02/24/news/aborto_clandestino_su_web_dilaga_protesta_contro_maxi-multa-134164143/?refresh_ce). Accessed 27 November 2018.

<sup>14</sup> ECSR, *International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy*, Complaint No. 87/2012, decision on the merits of 10 September 2013, Resolution CM/ResChS(2014)6; ECSR, *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 91/2013, decision on admissibility and the merits of 12 October 2015, Resolution CM/ResChS(2016)3. See also: ECSR, 'Follow-up to decisions on the merits of collective complaints- Findings 2018' (24 January 2019).

<sup>15</sup> On this point see also the 'European Access Abortion Project'. <https://europeabortionaccessproject.org/>. Accessed 28 November 2018.

<sup>16</sup> UN Human Rights Committee, 'Concluding observations on the sixth periodic report of Italy' (1 May 2017) CCPR/C/ITA/CO/6.

<sup>17</sup> UN Committee on Economic, Social and Cultural Rights, 'Concluding observations on the fifth periodic report of Italy' (28 October 2015) E/C.12/ITA/CO/5; UN Committee for the Elimination of All Forms of Discrimination against Women, 'Concluding observations on the seventh periodic report of Italy' (24 July 2017) CEDAW/C/ITA/CO/7. See also *Magistratura Democratica* (2017).

## The Current Abortion Debate in Italy

More recently, a new wave of attacks against abortion has been launched by the pro-life movement. For instance, in Northern Italy, Verona was declared a ‘pro-life city’ by a decision of the City Council on October 2018, and similar motions were discussed and in some cases approved in other Italian cities (Giuffrida 2018). The promoters of these initiatives declare that their goals comply with those of Law 194, which aims to safeguard the social value of maternity and protection of human life from its beginning (Article 1). Moreover, these initiatives are not isolated interventions. Indeed, there are other clear indications of an increasing tide of pro-life activism in the country. For example, in May 2018, several posters appeared across Rome in the month of the fortieth anniversary of Law 194. They bore slogans including “abortion is the first cause of femicide in the world” and “every five minutes a child is killed”. Another poster represented a giant embryo with the words: “this is how you looked at your sixth week, and now you are here because your mother didn’t abort you”.<sup>18</sup> In March 2019, the World Congress of Families took place in Verona. This international gathering of conservative organisations has an openly anti-abortion agenda. Among leaders and exponents of political parties and members of the Italian Parliament who took part was Matteo Salvini, who at that time was Minister of the Interior in the Italian Government.

On the other hand, the current Italian feminist movement *Non Una Di Meno* (No One Less), has been very active in promoting abortion rights through various events to mark the 40th Anniversary of Law 194 in May 2018 and International Abortion Day on 28 September 2019. One of its slogans and hashtags on social media is #moltopiùdi194 which means ‘much more than Law 194.’ Besides the feminist movement, other pro-choice organisations are also involved in ensuring that Italian women can access safe abortions. The pro-choice gynaecologist Elisabetta Canitano of the association *Vita di Donna* (Woman’s Life) has opened a hotline to support women seeking an abortion; the group *Obiezione Respinta* (Rejected Objection) is committed to mapping hospitals where there is pro-life medical personnel; *IVG, Ho abortito e sto benissimo!* (I Had an Abortion and I am Alright) is a project focused on fighting against the abortion stigma; *LAIGA—Libera Associazione Italiana Ginecologi per l’applicazione della legge 194/78* (Italian Gynaecologists’ Free Association for the Application of Law 194/1978) and *AMICA—Associazione Medici Italiani Contraccezione e Aborto* (Contraception and Abortion’s Italian Medical Association) are currently the two main associations of pro-choice gynaecologists in Italy. More recently, in September 2018, the Pro-choice Network *RICA—Rete Italiana Contraccezione Aborto* (Contraception and Abortion’s Italian Network) was founded; it includes the above-mentioned organisations and also gathers information on pro-choice journalists, lawyers, obstetrics, activists and academics.

<sup>18</sup> “Italy’s far right use Irish vote to boost anti-abortion campaign,”. *The Guardian*, 19 May 2018. <https://www.theguardian.com/world/2018/may/19/italys-far-right-use-irish-abortion-referendum-to-boost-pro-life-campaign>. Accessed 5 December 2018.

## Conclusions

In this brief comment on Law 194, I have shown how women in Italy find themselves in the paradoxical situation of holding a formal legal right to abortion, but at the same time have to overcome multiple obstacles in order to access the procedure. I underlined the extent to which the application and interpretation of Law 194 has depended on social and cultural variables, with the Catholic Church within Italy playing a significant role in driving restrictive interpretations of the law and pressuring doctors to become conscientious objectors. In conclusion, Italian Law 194 was an important achievement and an improvement on the pre-1978 situation, but it has not fulfilled its promise of making abortion widely available.

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