LEGAL APPROACHES TO ABORTION: AN ANALYSIS OF THE RULE OF LAW IN REGULATING REPRODUCTIVE RIGHTS AND CHOICES

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I wish her/his success in life.

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AJEETA DIXIT

LLM[CSL]

LIST OF ABBREVATIONS

A.C.	Appeal Cases
AIR	All India Reporter
All E.R.	All England Reports
CEHAT	Centre for Enquiry into Health and Allied Themes
CMR	Child Mortality Rate
CSB	Central Supervisory Board
H.L.	House of Lord
I.C.M.R	Indian Council of Medical Research
I.L.R.	Indian Law Reports
IMR	Infant Mortality Rate
IPC	Indian Penal Code
LR	Law Reports
MASUM	Mahila Sarvangeen Utkarsh Mandal
MTP	Medical Termination of Pregnancy
PNDT	Pre-natal Diagnostic Techniques
SCC	Supreme Court Cases
SSB	State Supervisory Board
TFR	Total Fertility Rate
USG	Ultrasonography
WHO	World Health Organization

LIST OF CASES

.

1. Air India v. Nargesh Meera
2. Allied Themes (CEHAT) v. Union of India
3. Attorney General of
4. B.K. Parthasarthi v. Government of Andhra Pradesh,
5. Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India
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14. Medhurst v. Medhurst
15. Planned Parenthood of Southeastern Pennsylvania v. Casey
16. R v. Tait
17. R. v. Smith
18. Rajeshwari v. State of Tamil Nadu
19. Roe v Wade
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CHAPTER- 1

INTRODUCTION

The term abortion is derived from the Latin word abortus, which implies a thing that has been separated from its appropriate place. An abortion is a process that occurs when the fetus's life is terminated in the mother's womb, or when the uterus empties prematurely before the foetus has reached the stage of viability. Abortion is a widely contested and contentious subject in the world today.

In general, there are two legal approaches to abortion: liberal and restricted.

The permissive approach enables women to have access to abortion with little restrictions. Countries that use this approach often see abortion as a basic human right and enable women to make their own decisions about whether or not to get an abortion.

On the other hand, the restricted approach creates considerable restrictions on abortion access. Countries that take this approach often only permit abortion in restricted situations, such as when a woman's life is in jeopardy or in cases of rape or incest.

Several faiths have maintained consistency in declaring abortion to be completely prohibited. However, the sole exception to the religious belief that abortion is permissible is when the pregnancy is regarded to be dangerous to the mother's life and there is no other alternative to save the pregnant woman's life.

Affirmation is largely opposed in society and seems to push for all possible strategies to lower abortion rates. Humanists oppose abortion as a technique of fertility control. They are also strong proponents of early childhood education, boosting women's social position, and providing freely accessible services for all elements of family planning, emergency contraception, and so on in order to minimize the number of induced abortions.

Abortion was strictly forbidden and considered a crime until these condition half of the twentieth century, except when performed to save the life of the pregnant women.

However, since humans became aware of their reproductive system and reproductive capability, they have endeavored to control reproduction, manage births, and have children only when required.

The principle behind international human rights is that all persons are born free and equal in dignity and rights. The promotion of human rights was identified as the basic purpose of the United Nation in1945.The Universal Declaration of Human Rights was then approved in 1948 as a universal or common standard of success for all people and all nations.

The international law has established specific prerequisites for realizing human rights in general and human rights for women in particular, since when we talk about human rights as well as concerns for women's well-being, it is their productive right that is in reality the biggest need of the human race.

However, some human rights concerns concerning women's rights have lately emerged in the public eye and have been elevated to the top of the international human rights agenda. Women's rights have recently been a central issue for the United nation and regional organizations created with the goal of promoting and defending human rights. United Nations, national and international non-governmental organizations, professional and medical groups, and academic initiatives have all worked to guarantee that women's reproductive and sexual rights are protected.

The United Charter of 1945 included the obligation" to promote universal recognition and enjoyment of human rights and fundamental freedom for all without discrimination on race, sex, language and religion". Nonetheless, the Charter does not specify these rights. Three years later, the United Nations adopted the UDHR, the first international legal document to define human rights. The preamble declares, "to reaffirm belief in fundamental human rights, in the dignity and worth of the human being, in equal right of men and women." It also did not mention reproductive rights. It was at the UN's1968 International Conference on Human Rights that Reproductive Rights were first discussed as a subset of human rights. As a result, the topics of procreation and family planning were directly addressed to human rights at this Conference. According to Article 16 of the Teheran Proclamation, "Parents have a basic human right to determine freely and responsibly the number and spacing of their children. "However, the major focus in the "basic human right" principle is on population control rather than on productive freedom. Since1968, the right was extended and discussed in other international documents. Article 14[f] of the concluding documents adopted at the world population conference in Bucharestin1947 ,family planning was defined as follow: All couples and individuals have the fundamental right to decide freely and responsibly the number and spacing

their children ,as well as the ability ,knowledge and means to do so. In the United Nations, reproductive rights contain two basic components: the freedom to choose how many children to have and when to have them, as well as the right to access family planning services.

Although the international bill of human rights contained abroad set of rights to which all people including women, are entitled it was not without its merits. However, the mechanisms for protecting women's human rights were given by the Convention on the Elimination of All Forms of Discrimination Against Women, which was also adopted in India. It is the first human rights treaty that recognizes women's productive rights and addresses culture and tradition as elements determining gender roles and family interactions. It is a legally binding convention under which governments have the right to abolish discrimination in two civil, economic, social, and cultural spheres, including as healthcare and family planning. The issue of how the unsafe abortion affects the women's wellbeing and life was brought to the fore front of CEDAW.CEDAW bans discrimination between two men in terms of access to health care throughout their lives, notably in the areas of family planning, pregnancy, and birth control during the postnatal period. The UK liberalized its abortion law in 1967 with the Abortion Act, which generally allowed abortion if a pregnancy is unproductive due to fear malformation. The Human Fertilization of Embryology Act of 1990 rectified the flaws of the Abortion Act of 1967 and allowed for the exemption of two doctor requirements in instances when the termination of pregnancy is critical to save a woman's life or preventing substantial irreversible impairment to her health. Section 1[4] of the Act of 1990.The updated 1967 Act emphasizes the needs of pregnant women in making pregnancy termination decisions.

The Irish Supreme Court has ruled that the right to abortion and the right to privacy of a pregnant women do not extend to the right to terminate pregnancy, and that the unborn child has a right to life and is protected by the constitution, exception cases where it is ruled that is matter of probability that there was "real and substantial risk "to the life, as distinct from the health of the mother.

In 1967, the United States liberalized the state of Colorado's abortion legislation, allowing abortion for the first time on the grounds that delivery put women's bodily or mental health at risk, or where pregnancy originated from rape, incest, or felonious behavior. The U.S. Supreme Court in its famous Roe and Doe decisions in 1973 establishes the basic law governing abortion in USA.

Upto1971, abortion in India was exclusively regulated by the IPC.

With the passage of MTP Act1971, the same legislation was ratified by parliament. The MTPA is a significant piece of social legislation in India, and it will go a long way towards allowing a woman to decide for herself whether or not she wants to have and nurture a child.

The technological advancement Ultrasonography, amniocentesis, and chrionicvillus sampling were among the scientific advances that were used to detect genetic abnormalities in the foetus at a time when pregnancy occurring. If necessary, the foetus may be terminated. Besides identifying the serious mental and physical abnormalities in the unborn, these techniques can also reveal the sex of the foetus. In addition, the Government of India adopted the PNDT Act in 1994 to control and restrict the prenatal diagnostic technology in order to limit the risk of female feticide.

The Supreme Court has said that the right to privacy is implicit in Article 21of the Constitution and a right to abortion can be read from this right.

1.1 STATMENT OF THE PROBLEM

The issue of abortion has been a contentious topic in many societies worldwide, with laws and regulations often being imposed to govern its practice. However, the legality and regulation of abortion are susceptible to differing interpretations and debates, leading to uncertainty and ambiguity in the implementation of the laws that control it. The lack of clarity on the legal approaches to abortion has led to challenges in protecting the reproductive rights and choices of women. As a result, the purpose of this research is to explore the legal approaches to abortion and analyze the role of the law in controlling reproduction. Rights and choices to identify the challenges, gaps, and opportunities in the current legal framework.

With the stringent restriction against abortion and no legal foundation for the aforementioned act, the majority of women would travel to backstreet abortionists, resulting in a high rate of maternal death as a consequence of such illegal abortions, which were being conducted largely by unskilled persons under unsanitary circumstances. Women are not permitted to reproduce or have abortions, which complicates their options and forces them to meet their urge to reproduce and have abortions. Therefore, researcher has undertaken to study he issue concerning right of reproduction and abortion rights and suggesting measures to overcome this problem.

1.2 REVIEW OF LITERATURE

According to a review of the extant literature, the legislation on abortion in India was stringent in the early years of its passage, i.e. under the IPC, but the legal provision has been updated from time to time and the current law is liberalized as compared to the original law, although certain loopholes in the law still remain, leading to its misuse. While the law in America is liberal and has evolved in tandem with scientific advances, The researcher went to Modi's Medical Jurisprudence Book, Ratanlal and Dheerajlal, and S.N.Mishra Book on Indian Penal Code the book provide the detailed insight law on this subject.

1.3 AIMS AND OBECTIVES

The research's goal is to explore the law of abortion rights, criticize abortion laws, and characterize Indian women's sexual freedom in the context of abortion, as well as conduct a further comparative study of abortion law in other countries. The key goals are as follows:

- To explore the various legal approaches to abortion in various nations and jurisdictions, including their historical history, present status, and future possibilities.
- To examine the influence of legal frameworks on reproductive rights and choices, with a special emphasis on how laws and regulations affect women's access to safe and legal abortion services.
- To identify obstacles and inadequacies in the present legal framework governing abortion and reproductive rights, including concerns with the interpretation, enforcement, and implementation of legislation.
- To evaluate the role of the court and other legal actors in developing legal approaches to abortion, including their impact on the formation and implementation of laws and regulations. To provide suggestions for enhancing legal approaches to abortion and reproductive rights based on a comprehensive examination of the rule of law and the preservation of human rights, particularly the right to health, autonomy, and dignity.

1.4 HYPOTHESIS

- The legislative frameworks governing abortion influence the access and availability of safe and legal abortion services, and so have a considerable effect on reproductive rights and choices.
- The court and other legal actors play critical roles in developing legal frameworks and preserving reproductive rights and choices.
- There are challenges and inadequacies in the present legal framework governing abortion and reproductive rights, including concerns with the interpretation, enforcement, and implementation of legislation.
- A thorough examination of the legislative approaches to abortion is required to identify the obstacles, gaps, and possibilities in the present legal framework and to provide suggestions for strengthening the protection of reproductive rights and choices.

1.5 RESEARCH METHODOLGY

The doctrinal approach used for this study. The doctrinal research includes an examination of the legislation, case laws, and existing secondary material from different sources such as books, essays, websites, and so on. And comparative study with other nations. The research is descriptive in character and is mostly based on secondary material published in books, Acts, various government papers, nongovernment bodies, and court-decided cases.

1.6 CHAPTERIZATION

Chapter 1: Introduction

Present chapter aims to give a broad outline of proposed research topic, the backgrounds which the researcher has observed upon which the researcher has formulated his hypothesis, the methodology adopted for study and aims and objectives with which the work has been carried out. It also explains the brief idea of research work.

Chapter 2: Historical Perspective on Abortion

The present chapter will study about the history of abortion and will discuss about the various factors which contribute abortion.

Chapter 3: Issues Related with Abortion

The present chapter will discuss about the challenges revolving around the issue of the abortion.

Chapter 4: Reproductive freedom, including the right to abortion and the right of the unborn to life.

This chapter deals with woman right of abortion including the right of reproduction which includes right to reproduce or not.

Chapter 5: Comparative Study of Laws between USA, UK and Ireland

As Indian legislation is highly inspired from the laws at global level, it is necessary to study the laws of certain foreign countries on the issue of abortion so as to compare the measures and protection granted by foreign courts& Indian courts, in order to provide suggestions for effective implementation of abortion for the cause of facilitating justice to victims.

Chapter 6: Law Policies And Programmes for the Protection Of Reproductive Rights Of Women in India

This chapter deals with implementation of various policies and programs to protect the reproductive rights of women.

Chapter 7: Conclusion and Suggestions

The present chapter will be concluded by various factors considered in the proposed research work & will give a summary of what work has been done and suggestions for effective implementation on abortion and measures to overcome its drawbacks.

CHAPTER 2

HISTORICAL PERSPECTIVE ON ABORTION

The study of a human issues in its historical context is valuable if attempts to address it are guided by experience and learning. It is interesting investigating how the Hindus, Muslims, and Christians who dominate the society have dealt with abortions in the past in their religious - cultural pattern of social order. This may assist to dispel misconceptions about socio-religious views towards the difficult issue of embracing abortion as a health intervention. It may also provide a clue to some indigenous methods of achieving the desired result, or at the very least allow us to evaluate such methods under modern medico-legal standards. Prior to the implementation of the current Act, induced abortion was largely an offence, dealt with under the Penal Code, the provisions of which still stand, albeit in a narrower campus. A review of the scheme and provisions of the Act is therefore required to understand them not only with reference to their Constitutions and the Human Rights Charter of the United Nations, but also to appreciate their efficacy in meeting the situational requirements of people. A pregnancy may be termed as 'unwanted' when it is not desired by either or both spouses or society at large. The 'unwillingness' might be due to a variety of causes, among which the economic concern was formerly the last, but is now the first. Other influences may include the moral and ethnic beliefs of the culture at the time. Indian society did not suffer from either economic hardship or the conservative and stringent sex taboos[1] that subsequently arose[2]. The proverb "the golden bird" has long been associated with the nation. First and foremost, an unplanned pregnancy is one that occurs outside of marriage. However, such pregnancies were uncommon among individuals who led basic lifestyles. Furthermore, Muslims saw marriage as a contract with some contemplation and less laborious recession, but Hindus regarded it as a sacrament that could not be dissolved. However, the Hindus recognized numerous types of marriages, probably to legalize varied sexual relationships engaged into under different situations.

[1]In the ancient Hindu culture there was no pardah system, boys and girls both were entitled to get education. Marriages were also arranged by the choice of boy and girl themselves and the practice was known as swayambara.
[2] The later practices of the observance of pardah by woman and girls, segregation of boys and girls from each other, etc. developed particularly after the Muslim invasion and establishment of their dynasties.

However, Hindu mythological literature shows that children were born outside of marital bonds and somehow adjusted in society. The position among Muslims in this regard was possibly not much different. The number of unwanted pregnancies could have been higher as a result of wars and foreigner intrusions. Such pregnancies can endanger a society's ethnic values. Many battles, foreign invasions, and infiltrations forced the Hindus to become a closed-order society, outcasting anyone with polluted blood. For Muslims, believing in Islam is enough to keep someone in their fold. These patterns also suggest that undesired pregnancies on ethnic grounds were not aborted but rather endured[3]. Women had a very high social status among the ancient Hindus, and motherhood was highly regarded. Child-bearing was regarded a necessary role that they should carry out without hesitation.[4] Cases when the pregnancy may have been terminated to save the expecting mother's life and health are rare. The greatest duty a Hindu woman could do for her husband and society was to give them with a descendent. Overpopulation did not threaten the existence of the people who lived hundreds and thousands of years ago, but the Hindu thinkers were not oblivious and recognized the need to plan life and consumption of resources, in such a way that a misbalance beyond control did not occur. The life was split into four phases, of which only one (grihastha) was designated for worldly and familial purposes. As a grihastha, one had to live a life of restraint and austerity while adhering to many religious and social traditions. Sex was to be used for reproduction, not as an aim in itself. Impregnation has to be sanctified with appropriate rites for religiously sanctioned procreation. It demonstrates that children were not created randomly and arbitrarily.

2.1 History of Abortion in Hinduism

Abortion was not unknown to ancient cultures[5], Hindu and Muslim being no exceptions. However, references to it in the source material of these civilizations are discovered in contexts different than what is now expected.

[3] According to a conservative estimate village abortions took place between 300000 and 400000 in Bangladesh, Report of Dr. G. Davis to the Medical Association for the Pretention of War 185 (London 1972).

[4]The importance of child to keep the family line was so great that resort to Niyoga was reported in the ancient Hindu literature. Under this practice a woman, who was unable to get a child from her husband, was permitted to conceive outside the wedlock. But the child so born carried the line of her mother's husband. The practice of adoption of child also shows that a child was a must for a family.

[5]The Greek, Roman and Chinese civilizations had applied their minds to abortion or its techniques. Aristotle approved it in his Politics Book VII chapter. 16

Atharvaveda, one of the original sources of Hinduism, denounces that "beyond him who committed an abortion (or bhrunhan) the sin does not pass[6].Foeticide was forbidden and regarded as murder, implying the denial of the Vedas, incest and consumption of spirituous liquors[7]. Manu declares a woman who has procured abortion as an outcaste, or a murderer of her husband or of a Brahmin[8].Kautilya prescribed differing penalties for abortion, depending upon how it was procured. The highest punishment was allotted for the abortion caused by physical assault, the middle most for one by drugs and the lowest for one by rigorous labor[9].While prescribing penance for the slayer of a Brahmin, the same has been prescribed for one who destroys embryo of a non-Brahmin woman, slays a Kshatriya or a Vaisya, or a Brahmin woman in the menstruation period. The Ayurvedic texts, also instead of describing directly any medicine or method to procure abortion, generally, discuss causes responsible for the loss of foetus, e.g. by taking direct blows to abdomen etc. and recommend their avoidance. These authorities usually prescribe medicines to restore the disturbed pregnancy. However, the interruption of pregnancy at its different stages, has not been treated equally for certain ritualistic consideration. For example, the loss of embryo upto its fourth month is considered as 'flow' (or discharge), in its fifth and sixth months it is termed as 'fall' (or miscarriage) and in the months thereafter it is 'delivery' (premature if without completing the full gestation period). The woman is unworthy of touch (i.e. should remain aloof), for three days if she has the 'flow' in third month, for four days if it happens in the fourth month. The husband and his spindas are purified only by taking bath. Whereas the 'fall' in the fifth or sixth month renders the woman liable to total separation for five or six days respectively, while the husband and his spindas have to undergo three-days birth purification (by bath). It is not "death purification." This impurity arising due to 'flow' or 'fall' is alike for members of all varnas(i.e. the four castes). The seventh month or thereafter (premature) 'delivery' attaches to the parents and the spindas birth impurity, to Brahmins for ten days, to Kshtriyas for twelve days, to Vaishas for Fifteen days, to Sudras for a month and to other mixed caste similarly as to the Sudras it is so said. Vijnaneswara does not call it impurity but requires only bathing. Or, the members of all varnas have to observe ten days of impurity. In birth impurity the pregnant woman remains untouchable for ten days.

[6]'Hymn of the Atharvaveda' 42Sacred Books of the East' 165, 521 (F. Max Mullered. ,Motilal Banarsi das, Delhi 1897
[7]'Scared Laws of Aryas' 2 pt. Iid. At 74, 281 (1896).
[8]'The Laws of Manu' 25id at 184 (1886).
[9]ShamaSastry,Kautilya'sArthasastra259 (1967), Fine of 1000panas, 500panas and 250 panas respectively.

Her unfitness to work on birth of a female child is for thirty days and on that of a male child it is for twenty days. But the above stated impurity (due to premature 'delivery') period is to attached to this normal period. Thus a Brahmin woman is forbidden to work for forty and thirty days respectively. Bhrunahan was, thus, generally condemned in the strong terms. This attitude of the ancient Hindu preceptors may be easily appreciated in the socio-economic and political conditions of their times. The life was simpler. The problem of unwanted pregnancies had not confronted them. The Hindus had solved the problem of sexual impropriety by recognizing a number of types of marriages[10], which also provided solution to a greater extent for the problem of illegitimacy. Every birth was an asset to the growing humanity. Increasing number of hands were required to strengthen the socio-economic well-being of the family, clan or the community and also toensure the political solidarity and stability. At no time consumption had gone beyond production or the natural resources were used exhaustively. At any time the practices of sati, or (female) infanticide if tolerated, were for reasons other than demographic. The Hindu society, like practices many other ancient and predominantly patriarchal societies, cherished birth of a son in preference to that of a daughter. That may be a reason why bhrunahan was more disapproved than infanticide. An unborn male child in the joint Hindu family can share the family property and this reflect the significance and sanctity of an embryo. Further, Hindu spiritual considerations also make birth of a son indispensable for the salvation of the parents and the ancestors. The Hindu faith in ahimsa (non-violence) which was many times strengthened by the Buddhism and Jainism, worked against any recognition of abortion. The Bhikhu "who intentionally kills a human being in order to obtain abortion" is no Samana and no Sakyaputta follower, according to Buddhism, which denounces and destruction of life. The Jains who even screen the air and water that they take in for fear that the smallest life in form of bacteria or insect many not be killed, cannot think of destroying a human embryo. The Hindus were, however, aware that whatever be the social or moral precepts, the occurrence in society of bhrunahan or abortion could not be ruled out. And an enduring culture must take into consideration the frailties of human character and mind. The institution of penance, therefore, provided ways to atone the sin of bhrunahan. In its penal provisions, Kautilya's Arthshashtra discloses that the gravity of the offence of abortion depended on the method adopted to procure it.

[10] Eight forms of marriages find mention under the ancient Hindu system : Brahma, Parjapatya, Daiva, Arsha, Asura, Gandharva, Rakshash, and Paisacaa, the last four were not approved but recognized.

Similarly, the gradation of the rigor of the rituals according to the length of the pregnancy aborted shows that the social disapproval of abortion was not undiminished at any stage.The considerations fortify our view that the Hindu thought and practice, with its phenomenal adaptivity to changing circumstances, might have not been averse to the legalized abortions in the present context. It is said that some of the ancient Hindu lawgivers who were able to envision the future had proclaimed that many of the practices and principles then abided by them, would not hold in the coming ages (i.e. in the Kalikal).

2.2 HISTORY OF ABORTION IN ISLAM

As a result of the battles fought during the early days of Islam, and the nomadic and expansionist tendencies of the tribes that subscribed faith in the Holy Quran, increase in number was the need of the time. and he who has not the means let him keep fast". Besides this precondition to have family life, the Holy Quran also lays down many obligations and instructions for the proper maintenance and upkeep of the wife and the children. To enable the mother to take full care of her child, spacing between child-births has been advised. All these considerations show that Islam was not opposed to family planning; rather, it supports it. However, for the ways and means to achieve proper planning of the family life. Islam, like other religions, emphasizes the prophylactic measure of self control through fasting, and provides suitable rules and customs of social behavior and matrimonial relations.[11]In this background it is difficult to find any detailed reference to the use of contraceptives to avoid unwanted pregnancies yet some mention in this regard is made in Hadith- another important source of religious injunctions. The adoption of practice of azl(coitus interrupt us) is traceable on the Prophet's times. Later in the fifth century hijrahazl was a permitted practice in view of certain social conditions necessitating avoidance of conception, in different circumstances e.g. (a) with slave girls, to protect ones proprietary rights; (b) with free woman, to protect the wife's health and beauty in other words to preserve the health of the mother of one's children;(c) and also to save bread-winner from the anxiety to feed and support many children.

[11] During the long period of Ramzan (the fasting days) coitus is disapproved. A gap of few months must elapse between a divorce and remarriage, see Mulla, Mohamedan Law 258 (M. Hidayatullahed. 1972).

Recently many fatwas have appeared in favor of family planning. Recently, in the Muslim world there is softening of attitude towards abortion acceptability[12]. Islam attaches great importance to protecting the life of a Muslim. Amongst the Muslims, the practices of sati, human sacrifice, or infanticide are not heard of. However, there is a recorded reference to a talk, at which Hazrat Ali, Hazrat Zubair and other companions of the Holy Prophet were sitting with Hazrat Umar. The discussion was as to what constituted infanticide? Hazrat Ali replied that an infanticide cannot take place until the foetus has passed through the seven stages of its growth, as narrated in the Holy Quran, i.e. "an extract of clay, a sperm, an embryo, a limp of flesh, making of bones, dressing with muscles, and then creation into another being." Hazrat Umar then said, "You told the correct thing. May Allah prolong your life." Another view to the same effect can be found in the collection of Bukhari, where it is stated that the soul does not enter the body of the foetus until the eightieth day of gestation. Thus, until the embryo is created "into another being or it is "instilled with the soul," its destruction may not amount to infanticide, and abortion done during this period may not be against the tenets of Islam. Since then, the intensity of the situation has been steadily deteriorating, in direct proportion to advances in science and trade. Because of the merchants' civilization, the frequency of clandestine abortions in Bengal had not remained modest by the mid-nineteenth century. At the period, the major causes for such activities were most likely moral limitations of the individuals. Since then, the number of induced abortions has been steadily increasing across all segments of Indian society. This has occurred despite religious injunctions and legislative constraints, indicating that the driving incentives for abortion have been greater. It is also possible that, until recently, the majority of illegal abortions were motivated by socio-moral concerns. The religious and cultural traditions of Hindus and Muslims, or any other society, no matter how strictly put down and adhered to in the distant past, find it impossible to survive the assault of the materialistic world of today. Though ideas and traditions impact individual acts, they are also influenced by time. The sustainability of ethical standards that are at odds with mundane events of life is dependent on acceptable compromise rather than outright rejection of the latter. The task of enabling such changes is on the leadership rather than the public. Induced abortions among Hindus and legal preceptors and authorities to wean them from illegal actions by synchronizing law and medicine to the instilled need full motivations.

[12]The Holy Quaran23 : 12-14

2.3 History of Abortion in Christianity

Attitudes towards abortion in the ancient world were generally positive, with few reservations regarding its practice. Abortion was legal in ancient religion, and foetal rights were mostly unrecognized [13]. Interestingly, one of the core conditions of the Hippocratic Oaths is a categorical prohibition against abortion in any form . Early common law, motivated by its own philosophic and religious discussions over whether the unborn was regarded "alive," recognized abortion as a crime only after "quickening." That is the moment in time when the embryo in utero becomes capable of discernible and autonomous movement [14]. This was commonly thought to happen between 16 and 18 weeks of pregnancy, albeit no actual evidence was provided to support this. When England passed its first legislation in 1803 - Lord Ellenborough's Act - it retained the concept of "quickening," using it to distinguish between a simple felony before the incidence of quickening and a capital offence once the foetus is quick. Compare this to the situation eighteen years later. Across the Atlantic, in 1821, the United States state of Connecticut became the first to pass abortion laws similar to the Ellenborough Act. Meanwhile, in 1828, the state of New York established laws criminalizing abortion (which would become the prototype model for early legislation throughout the United States), although to varying degrees, both before and after quickening. Furthermore, it recognized and listed "therapeutic abortion" as acceptable and excusable, ensuring certain safety measures to pregnant women in circumstances when their doctors had cause to feel the mother's own life was in danger. Within a century, however, by the middle of the twentieth century, the majority of US states had established a full prohibition on abortion, save in circumstances where the mother's life was in danger. In the 1960s and 1970s, many US states began to adopt some version or variation of the American Law Institute's Model Penal Code , (hereinafter referred to as the A.L.I. Model), in which abortion laws were decisively less stringent than before. Women's right to abortion started to recapture some of its early effectiveness, although in a very wide sense and only in a very limited proportion. Despite their new shape, the rules provided significantly fewer opportunities to have a medical abortion than in the past. In 1996, Colorado became the first state to legalize abortion.

This drive towards the A.L.I. Model and more liberalized legislation in general was, it should be remembered, a rising but not universal tendency at the time. Texas, which passed its first

[13]See BBC, Religion and Ethics-Ethical Issues, available at http://www.bbc.co.uk/ethics/abortion/legal/history_1.shtml (last visited on March, 2013).

[14]William Blackstone, Commentaries on the Laws of England, Originally published in 1765.

abortion legislation in 1840, was among the states that made little progress in liberalizing its abortion laws. Laws prohibiting abortion, except in cases of imminent danger to the mother, remained in effect in the majority of US states. Against this backdrop, it may be worthwhile to consider the landmark judgment and decision of **Roe v Wade** (Hereinafter referred to as Roe). Herein, an unmarried, pregnant woman, under the pseudonym of Jane Roe, instituted a federal action in the year 1970 against the District Attorney of Dallas County, Texas, where she resided, shall She claimed her desire to receive a 'legal' abortion "performed by a competent, licensed physician, under safe, clinical conditions"[15] and said that she would be unable to travel to a country that would enable her to obtain such an abortion. She had no legal foundation for aborting in Texas since her life was not endangered by her pregnancy (prohibitive abortion laws had existed in Texas with little alteration since 1854, but had always contained an exemption to save the mother's life). On January 22, 1973, Justice Blackmun delivered the Court's historic seven-two decision. This decision has since become a veritable cornerstone in any commentary on the long history of abortion debates in the United States. Justice Blackmun delivered the Court's opinion on behalf of the majority. The Court recognized, following the decision in **Griswold v Connecticut**, that a general right to privacy exists, although nowhere explicitly stated. It interpreted the said right as a "substantial" one, broad enough to include a woman's right to choose whether or not to abort and only subject to government regulation in the face of some "compelling" state interest (both the mother's life and the "potential life" of the foetus were recognized as "legitimate" interests). However, the State is only awarded a "compelling" interest after foetal viability is achieved. Abortion is completely prohibited at this point, save in circumstances of imminent danger to the expecting mother's health or life. On the abortion question, the Court upheld the trimester framework.

In the **Doe v Bolton** case, the appellant was denied abortion because the State of Georgia permitted abortion only to women who were citizens of the state and had obtained prior approval from the board of doctors; she challenged the procedural conditions as well as the residency requirements as being ultra virus to the United States. The Supreme Court declared any residency requirement unconstitutional and struck down requirements that abortions be performed at private accredited hospitals, appellants be screened by hospital committees, and two independent doctors certify that continued pregnancy is potentially dangerous to women's health. In 1989, however, in **Webster vs. Reproductive Health Services**, Roe was dealt a serious blow. The court, in a 5-4 decision, upheld a Missouri statute stating that human life

[15] See Justice Blackmun's opinion in Roe v. Wade, 410 U.S. 113 (1973)

begins at conception and declared that the state has a "compelling" interest in foetal life throughout pregnancy. Roe's trimester\viability scheme was basically overturned, but Justice O'Connor argued for the same thing in previous case law, withheld support from the portion of the Webster opinion that would have actually overturned Roe. As a result, federal abortion regulations remained substantially unaltered, but their reasoning started to disintegrate. Many states used this opportunity to enact more stringent state regulations. In 1990, two rulings **(Hodgson v. Minnesota and Ohio vs. Akron Centre for Reproductive Health)** found that states requiring parental approval before an abortion may be performed must provide for a judicial bypass. In fact, in the decade preceding up to 1992, the US addressed the Court as an amicus curiae in five different instances, attempting to overturn Roe, but the judgment was resoundingly affirmed in what would be hailed as another landmark: **Planned Parenthood of Southeastern Pennsylvania v. Casey.** (Hereinafter referred to as Casey), the Court had rejected Roe's trimester approach while upholding what it considered to be the "essential holding" of Roe. The courts were compelled to decide the constitutionality of the Pennsylvania statue in Casey, which required that "at least 24 hours before performing an abortion, a doctor inform the woman of the procedure's nature, the health risks of the abortion, the child's birth, and the child's probable gestational age." The statute also required the physician or another qualified person to "inform the woman of the availability of printed materials published by the state describing the foetus and providing information about medical assistance during pregnancy, information about child care from the father, and a list of organizations that provide adoption and other services as alternatives to abortion". In situations where the life or vital functions of the pregnant women were in jeopardy, this waiting period and informed consent were not applicable. In this case the Court had said that if the state were to legitimately pursue protection of any of its interests, it would be obliged to do so without imposing an undue burden on the individual's right of privacy. The board constitutional questions surrounding the abortion having been addressed in Roe and settled in Casey, more specific issues began to appear before the Courts. In **Stenberg v Carhart** (hereinafter referred to as Carhart I), at issue was a Nebraska state statute criminalizing the performance of partial-birth abortions, a particular form of abortion in which the living foetus is delivered partially into the vagina, aborted and then delivery is completed. There was no rule that made an exception for situations in which the woman's life is in jeopardy.

Dr. Leroy Carhart, a Nebraska medical doctor who performed abortions, brought this lawsuit arguing that the statute's provisions violate the US Federal Constitution. The case came in

appeal before the Supreme Court. The Court, in its opinion delivered by Justice Breyer in the year 2000, found that the statutes were unconstitutional firstly, because the requisite exception in respect of grave risks to maternal life was completely absent and secondly, their was full restriction regarding access to specific method of abortion, the statute was seen to place an undue burden on the woman's right to choose abortion itself. The judgment's breadth includes an examination of the various abortion options available, partial birth abortion being just one of them, as well as the validity of the prohibition on partial birth abortion under the statute, referring, as the District Court before it had, to medical definition and policy of the American Medical Association. The decision also contained a further retitration of the Court's as reasoning as an affirmation of the principles in Roe and Casey. The decision in Carhart I derive much of its value from the fact that the substance of the decision invalidated, for all intents and purposes, similar bans which were the majority of states in the US are in the process of enacting legislation. In the year 2003 the United States Congress passed the Partial Birth Abortion Ban Act (hereinafter referred to as the Partial Birth Act) criminalized the performance of partial birth abortions. Despite the verdict in Carhart I, this legislation had no exception for women health, as did the Nebraska statute which was subject to dispute. In yet another case brought to the courts, the validity of the Partial Birth Act was raised by Dr. Carhart (and others) challenging its constitutional validity and seeking a permanent injection against its enforcement, this decision we now call Carhart II. In this instance, Carhart II on appeal from the Eighth Circuit Court and another case, also involving US Attorney General Gonzales and the question of the validity of the Partial Birth Act (such cases were referred to as "facial" attacks or challenges to the statute) , with specific reference to the requirement of an exception for cases involving maternal health, **Gonzales v Planned Parenthood Federation of America,** Inc. , on appeal from the Ninth Circuit, were consolidated and heard by the Court. With a majority of five as against four, the judgment went in favor of Attorney General Gonzales - The Act was upheld. Justice Kennedy began his summary of the court's decision for the majority with an exposition on the various abortion techniques, as in Carhart I. The plurality opinion in Casey about state interest was revived, but Justice Kennedy made a sharp distinction: the act only controlled one from of abortion. It placed limitations on the selling of abortions itself, meaning: the bill saves not a single foetus from destruction, because it only addresses one method of abortion. "Justice Kennedy backed up the Act's broad argument. He argued that the act was "not void for vagabondship," does not carry an excessive burden of any length, and is not invalid on its face. “Roe, since its passage three and a half decades ago was a turning point in the evolution of the body of laws governing medical termination of

pregnancy. Its whole scope was whittled down early in its existence, most clearly and explicitly in Casey. But, despite that, its basic premises, its spirit unambiguously prevailed in all of the US Supreme Court's deliberations and pronouncements on the subject. It is a foreseeable consequence, however, that, after Carhart II, movements, especially pro-life advocacy, and their founding impetus will grow in favor of overthrowing Roe or circumventing it, most likely through legislation, as is already beginning to emerge in several US states. The question of whether the vast body of abortion jurisprudence in the United States Courts system will finally at all, let alone conclusively, amount to "progress" in the field of gender rights and, more particularly, for the cause of female reproductive autonomy has, now, especially after Carhart II and Casey taken on a significantly diametric range of possible answers as compared to those that were presumed like prior to the resolution of these cases. The precise answer is, at this juncture at least, only a product of time. Foetal Pain Legislation Act, 2005, The Act is an informed-consent legislation, quite similar to the informed – consent provisions upheld by the Supreme Court of America in Casey. Analyzing the provisions of the Act in the light of Casey, which till date, is the last and final authoritative ground for abortion – related policies in the United States, the answer we must arrive at would be quite clear and precise. While neither banning any procedure nor imposing restrictions upon the power of women to choose abortion, the Act lets women to take into consideration an additional factor, i.e., fetal pain and whether they want to choose a method to alleviate such pain or not. Given that the Act does not unduly burden the individual's right to privacy, the Act would pass constitutional muster if we can provide sufficient legitimate interests of the State which need to be protected. The Unborn Child Pain Awareness Act of 2005 (hereinafter the Act) aims to punish physicians heavily should they fail to advise women of the potential for fetal pain after 20 week's gestation. This is done by amending by adding a new chapter titled "Title XXIX-Unborn Child Pain Awareness" to the Public Health Service Act, first enacted in 1946. There has been a considerable furor over this particular provision in the Act as the medical fraternity is continuously making itself heard that at his stage of gestation, the foetus does not develop the necessary biological mechanism to feel pain as such. Case in point would be a wing of physicians, specialized in embryology and neuro-anatomy, who assert that pain fibers do not start penetrating the cortex before the foetus is 26 weeks old and the sensation of pain would not begin before the 29th week. Nevertheless, the Congress ignoring well-proven ideas on the same issue, state in the Findings which are a part of the Act that at 20 weeks after fertilization, foetuses have the capability to feel pain and to make the ambit even wider since the concept of what the foetuses might be feeling might not be pain at all the Congress in its Findings

mentioned that such foetuses might show such stimuli as may be interpreted to show feelings of pain if observed in infants or adults. The requirement of informed consent as laid down is Section 29 of the Act provides for some very stringent and conformist ideas about intimating the pregnant woman of the consequences of her action. The provision states the abortion-provider or an agent must provide to the pregnant lady, information that after however many weeks her foetus is into gestation (provided it is more than 20 weeks), such foetus has the necessary physical structures present to feel pain and that such foetus shall feel pain irrespective of whether the pregnant lady has been given pain-averting drugs or general anesthesia. The pregnant lady is to be then given a brochure to be designed by Department of Health and Human Services and also made to necessary sign a decision form whereby her decision as to whether or not pain-alleviating drugs shall be administered to the foetus directly are recorded for official purposes. This step-by-step method is not only to be compulsorily followed but the provision also mentions what exactly the abortion-provider or the agent must say in such situations. The only exception provided to this is in case of Medical Emergencies and such situations which would fall under this exception have also been defined in the Act. As such Medical Emergencies are to mean such situations in the reasonable medical opinion of an abortion – provider of imposing a "serious risk of causing grave and irreversible physical health damage entailing substantial impairment of a major bodily function" if abortion is delayed. Penalties for not substantially following the mandates of these provisions have also been laid down in the Act itself and range from monetary fines to cancellation of licenses. The Act also grants a private right of action to the woman on whom an abortion is performed in violation of the provisions of this Act or her legal guardians in case of a minor or un emancipated woman, to commence a civil action against such abortion – provider who has acted recklessly or knowingly, for actual and punitive damages. In America the ancient law accepted the law of abortion and the rights of the foetus were unrecognized. It was observed that in 20th century majority of US states had enacted a complete ban on abortion except for the cases in which mother's life is at risk. Under the present law, It is found that USA recognizes the woman's right to choose to have abortion that comes under right to privacy. State has also the interest of protecting the unborn child only after the stage of viability. Abortion is on demand up to 12 weeks of pregnancy and the decision is completely on the pregnant woman. First priority is given to mother's health and life which is under fundamental right to life and liberty and State cannot interfere without having the compelling State's interest of its own. The state is having legitimate interest in preserving and protecting of human. The Court has given priority to "liberty" which means the autonomous control over the development and expression

of one's intellect, interests, tastes and personality. The Court has given a strict interpretation of the interest. The cases referred above talks about the interest of woman physically and mentally during the pregnancy period and the interest which is going to affect throughout her life in upbringing the child. It banned partial birth abortions in the year 2013 criminalizing the performance of partial birth abortions and has enacted fetal pain legislation in 2005 to inform that the foetus feels pain after twenty weeks of pregnancy.

CHAPTER 3

ISSUES RELATED WITH ABORTION

1. RELIGIOUS ISSUES

India is a religious country. Nowhere else is the fabric of life so heavily imbued with religious views and practices as it is in India. The Indian Constitution states that the state pledges to respect and honor all religions.[16] It grants religious freedom rights to all Indians, not just citizens. These constitutional provisions protect religious freedom for individuals as well as religious organizations. Because India is a secular state, there is no such thing as a state religion, and all religious groups are afforded equal constitutional protection without favor or prejudice. In India, secularism does not imply irreligion. It entails respect for all faiths and beliefs. The state does not identify with any religion, but rather respects and honors all faiths equally.[17] Religion has an impact on the very core of societal behavior, attitudes, and values. Affiliation to a particular religious group influences reproductive behavior. There is no doubt that religion has been one of the important factors influencing the desire for physical union and procreation. Quite often, resistance to family planning has been attempted to explain in terms of its incompatibility with a given community's religious value system. The religious injunctions set for each group largely impact the attitude of members of each group towards family planning policies.

A. HINDUISM

Hinduism is an ancient religion practiced by hundreds of millions of people in India and across the world. A Hindu's life is a sequence of rituals and ceremonies that represent the Hindu community's attitude and behavior towards reproduction and life cycles. The three most significant rituals and events are birth, marriage, and death. All three are important in Hindu

[16] Article 25-28 of the Indian Constitution.
[17] Radha Krishnan, P-I27 (1968), Secularism in India.

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beliefs and behavior about reproduction and the life cycle. But, clearly, the roles and purpose of marriage are the most directly linked in the approach to fertility of the three.

Sanskara (sacrament)[18] is the Hindu term for marriage. Marriage has been seen as a social and religious responsibility by Hindus from the time of the Vedas. According to Hindu doctrine, "no man or woman can die without receiving this sacrament." Girl's marriage is seen as a natural and inevitable part of her life. Hindus are by nature family oriented and consider procreation a holy act. Children are the central purpose of the Indian marriage. In many communities' prayers for the brides motherhood forms an essential part of the wedding ceremony.

Before his death, a Hindu must be father and leave behind a son to carry on his duties. A Hindu son continues the family line and perpetuates the name of his ancestors. A son continues to have a significant place in Hindu society for practical purposes of succession as well as for emancipation of his parent's soul after their death through the performance of rituals, which may be carried out by his son.

Hinduism teaches that abortion, like any other act of violence, thwarts a soul in its progress toward God. However, it is not clear whether classical Hinduism contains specific prohibition against abortion or not. Some references in Atharvaveda disclose that abortion was known in Vedic age, but it is not clear whether or not such abortion were regarded as criminal. Reference to abortion found place in the thoughts of many Hindu sage thinkers, which was presumably either because of the gravity they attached to it as a sin or because its incidence was not insignificant. Foeticide was forbidden and classified as murder equivalent in gravity to the neglect of Vedas, incest and drinking of spiritual liquors. Manu declared a woman who had procured abortion as an outcaste or murderer of her husband or of a Brahmin. Yagnavalkya said that if a woman kills her foetus, she should be abandoned. Katyana contained a remarkable statement that even a Brahamin deserves to be killed if he is guilty of causing abortion. Nirukta considered abortion as one of seven sins (other six sins are theft, violating the bed of guru, murder of Brahmin, continued performance of sinful acts, telling a lie as sinful matter).

[18]Mulla, D. Principles of Hindu Law, 599 (1966)8. Karve, I.: Kinship Organization in India, 130(1953)10). J. Mayne, Hindu Law and Usage, 105 (195311.Sehgal, B.P. Singh. Women, Birth Control, and the Law, 37(1991).

Vardha-Harita prescribed that in the case of a woman who destroyed her foetus, her husband should have her nose, ear and lips cut off and then she should be banished. Similarly in Mahabharata it is mentioned that letting a woman's Ritual (fertile period) go waste was a sin tantamount to embryo murder. Ayurvedic text also refers to the knowledge and practice of abortion. They have generally discussed the causes responsible for the loss of foetus as by taking certain foods or drinks, doing violent motion or exercises or giving direct blows to abdomen etc. These texts recommend the avoidance of such acts along with prescription of the treatment for the prevention of abortion and restoring the disturbed pregnancy. In modern times, India's greatest apostle of non-violence, Mohandas Gandhi, has written: - It seems to me clear as day light that abortion would be a crime[19].

For example, Swami Kamalatmananda of the Ramakrishna Monastery in Madras, India, has said: "No one being has the right to harm the foetus. If having a kid is economically and socially troublesome, rather than murdering the infant, one might take efforts to prevent such an undesirable delivery. Precaution is preferable than destruction. Thus, it is obvious from the preceding text that the fundamental stance on abortion in Hinduism is that it is completely outlawed and considered a crime. Hinduism seems to think that life starts at conception... As a result, since the embryo-foetus is a human person, it has the right to legal protection, according to Hinduism. According to Hinduism, a foetus is a live, sentient being who requires and deserves protection. The notion of sterilization was completely foreign to ancient Hindu civilization.

In reality, the impacts of these religious edicts have been mitigated when a couple is forced to make a choice regarding family planning. Because their religious ceremonies influence the majority of Hindus, they are likely to view abortion, sterilization, and contraception to be against religion.

[19]Mohandas Gandhi, All Men Are Brothers: Autobiographical Reflections (New York:Continum, 1980), p. 15026. Hinduism Today, March 1986, p. 15026.

B. ISLAM

Muslims are India's most numerous minority community. Recently, there has been much debate on how far Islam allows the use of family planning in general, and abortion for population control in particular. Islam is an organic way of life. It is mankind's inherent religion. All of its rules, individual and collective, are based on the fundamental principle that man should behave and act in accordance with natural laws that he finds operating in this Universe, and that he should avoid a course of life that might force him to deviate from the purposes for which nature is operating. According to the Holy Qur'an, Almighty God not only created everything in the universe, but also endowed it with an instinctive knowledge of the ways in which it can most suitably perform the task assigned to it in the grand scheme of things: "Our Lord is He Who gave everything its peculiar form and nature, then guided it aright (i.e. showed it the way following which it can fulfill the purpose for which Its creation was due)."`[20] They have reason, choice, and obligations, like as caring for other species, the environment, and their own health. Muslims are required to be reasonable and balanced in all aspects of life, including health. Illness may be considered as a test or even a purifying process, but it is not viewed as a curse or punishment from Allah.

In Islam like in many faiths, reproduction is highly revered and children are a gift of God to provide "Joy to our eyes.". Family planning is a lack of faith in the all-powerful God. The Qur'an also declares that putting our confidence in God is adequate. Islamic religion holds that God would not provide a kid without also giving the resources to nourish it.

Contraception has a long history in Islam; in fact, early Islam developed contraceptive medicine and instructed Europe on it. Avicenna, the Muslim physician, wrote in his book "The Law" that when Europe was in its "dark ages," Islamic culture, with its emphasis on education, kept the light of learning burning for the benefit of all people.

All major schools of Islam permit the practice of Azl, but there are opinions that consent of wife is required. The Arab Republic of Egypt published a booklet called "Islam's Attitude Towards Family Planning" relying on the permitted Azl, they argue that any method that has the same purpose for Muslims, Azl and does not induce permanent sterility.

[20]Al-Qur'an, 20:50. 33.Qur'an, 2:30

Contraception is justified for a variety of reasons, including health, economics, maintaining a woman's appearance, and improving the quality of offspring. This last point is important in Islam because the Islamic approach to contraception has a social conscience and is concerned with the common good.

The basic view that Islam has regarding abortion is that it is forbidden; a favorite text to support this is: "Do not kill your children for fear of poverty, for it is We who shall provide sustenance for you as well as for them Muslims regard abortion as a wrong and Haram (forbidden), but many accept that it may be permitted in certain cases. For the same reason, the Hanafi School is the most accommodating towards abortion. It states that an abortion may be performed before the fourth month of pregnancy if a woman's pregnancy threatens the life of her already existing baby. The Maliki stance forbids abortion after implantation, but the Shafi'l school believes that the zygote should not be disturbed at any time after fertilization, and that interfering with its development is a crime.

Furthermore, even after ensoulment, when the foetus is regarded as having equal rights with its mother, "this dilemma is resolved by the general principle of Shari'ah: choosing the lesser of two evils. Rather than losing both lives, the life of one should be given preference over the other, " - i.e., the mother's life. While Islamic tradition thus evinces some diversity of views, the general trend is clearly against the abortion; the same may be concluded by quoting the Qur'an as defending the sanctity of life: "If any one slays a human being unless it be (in punishment) for murder or for spreading corruption on earth- it shall be as if he had slain the whole of mankind; whereas, if anyone saves a life, it shall be as if had saved the lives of the whole of mankind. Thus, it is evident from this quotation of Qur'an, that, every human being has the right to be born, the right to be, and the right to live as long as Allah permits. No one may be deprived of life except for a legitimate crime as discussed above. All Islamic law schools regarded the foetus as having the right to life. As indicated by the fact that the death sentence on a pregnant woman can be carried out only after she has given birth. Thus, this right to life is absolute in Islam: It cannot be overridden, even in cases of rape, incest or concerns regarding foetal deformity. Again` according to Hanafi School, some Medieval Theo logicians permitted contraception and abortion in the first four months of pregnancy i.e., before the foetus is 'infused with life'.

C. CHRISTIANITY

The Christian churches' attitude towards implementing social and political structures is gaining traction around the world. Scientist, eugenics and social planners who in past might not generally have felt called upon to intervene in doctrinal disputes about the nature of sex and sin increasingly find themselves engaged in arguments regarding marital norms and family planning practices, which pose religious as well as social difficulties. It would be beneficial to sketch the history of the Christian Church's teaching on contraception at such an era, when the sphere of public discussion broadens and concerns presented become more serious due to new chemical and biological discoveries. For centuries, Christian theology on intentional family limiting was plain and unequivocal.

The primary aim of marriage (sexual intercourse) was procreations of children. Secondary aim such, as mutual help between husband and wife or the alleviation of concupiscence was much less important in the marriage relationship. Any meddling with the natural process of coitus and conception was against God's commandments and must be denounced as highly wicked.

The religious attitude to therapeutic abortion In the strongest terms, Christians reject the practice of induced abortion, or infanticide, which involves the killing of a life already conceived (as well as the breach of the mother's individuality) unless as a rigorous and clear medical need. It is agreed that abortion should be permitted in situations where continuance of the pregnancy represents a substantial medical risk to the life of the mother, even if in a few exceptional cases this requires direct rather than indirect abortion. Nearly all Protestants have come to accept therapeutic abortion[21]. Beyond this, protestant opinion is divided, though it is quite possible that majority opinion would support the legalization of abortion upon an extended list of grounds. The Church of Rome, on the other hand, remains adamantly opposed even to therapeutic abortion. On this view, induction is not morally permissible even to save the life of the mother. The historical reason for the catholic objection to abortion is the same as for the Christian Church's historical opposition to infanticide: the horror of bringing about the death of an unbaptized child. When a child dies in original sin and without the sacrament of baptism, he or she is doomed to everlasting torment.

[21]Harold Rosen, Therapeutic Abortion, p.153 (New York, 1954).59.Fredericlc L. Good and Otis F. Kelly, Marriage, Morals, and Medical Ethics (New York, 1951).

According to Roman priesthood, every man has a right to his own life, which may not be taken from him by the act of another. An embryonic child is as much a human being, and therefore has as much right to life, as an adult; consequently all abortive operations are murder. Being sinful and cannot be justified by a good end Catholic position seems to some extent to be assailable even within its own presuppositions. If the foetus has a right to life, so has the mother. Situations occur in which a surgeon has to choose between destroying the foetus in order to save the mother's life, and allowing the mother to die in the hope of saving the foetus. Such a situation presents a moral choice, which is inescapable. The Catholic preference of doing nothing to assist the mother amounts in fact to a preference of the foetus over its mother, if not a sentence of death for both. Such a preference was logical at a time when emphasis was placed upon the paramount importance of baptism; but if that argument is given up it appears difficult to defend.

Every ethical theory provides specific positive values to which it pays significance; nevertheless, compiling such a list is complicated by instances in which one value contradicts with another. Merely to describe the values as natural rights does not solve this problem. The conflict may be either quantitative (one value conflicting with equal or greater quantity of the same value) or qualitative (one value conflicting with another value). An example of a qualitative conflict is the following: Suppose that a dike threatens to give way, and the actor is faced with the choice of either making a breach in the dike, which he knows would drown one or two people, or doing nothing, in which case he knows the dike will rupture at another point, engulfing a whole town in rapid disaster[22]. In such a situation, where there is an unhappy choice between the destruction of one life and destruction of many, utilitarian philosophy would certainly justify the actor in preferring the lesser evil. A philosophy that, like the Catholic, purports absolutely to forbid the doing of evil in order to procure a greater good may seem at first sight to counsel a policy of inaction in such circumstances. There is, however, a Catholic doctrine that may be used, if the canonists so desire, to reach the utilitarian result. This is the doctrine of double effect. It is sometime found that an act has two consequences, one good and one evil. If the actor intends the good consequences, his act may be rightful in Catholic eyes although he realizes that it will also have the bad consequences, provided that he does not 'will'

[22]This is recognized in the Code of Ethical and Religious Directives for Catholic Hospital, published in MC Allister: op. cit., p. 396.

the bad consequences, but only 'permits' it to take place, and provided that the good consequence is of a positive value equal to or greater than the consequence here called evil .This doctrine of indirect killing (which is only a particularized name of the doctrine of double effect) was used by the Pope to allow a therapeutic abortion where the operation could in some way be justified independently of the concept of abortion-e.g. where the uterus is dangerously diseased. A second application of the doctrine is in respect of ectopic or extra-uterine pregnancies, where a foetus grows in the ovary or abdominal cavity or (the commonest case) the Fallopian tubes, instead of in the womb. No absolute prohibition is now maintained of an operation to terminate such a pregnancy, because if the operation is not performed the death of both mother and child would be practically [23]certain. Catholic doctors have come at last to take the view that an operation on a tubal pregnancy is permissible, because the killing is not direct but indirect. The Ireland by its eighth Amendment on September 7, 1983 in its constitution, which became Article 40.3.3. The state recognizes the unborn's right to life while also respecting the mother's equal right to life . In 1992 the Irish Supreme Court gave judgment in the **Attorney General V. X and others**. Where diverging judgments were delivered in this. The judgment of Finlay CJ is often cited: ...if it can be established as a matter of probability that there is a real and substantial risk to the life, As opposed to the mother's health, which can only be averted by terminating her pregnancy, such termination is legal. A majority in the Supreme Court ruled that a threat of self destruction can amount to a substantial risk to the life of the mother. Christians strongly oppose the practice of induced abortion, often known as infanticide, which entails the death of an already conceived life. Save as a dictate of strict and undeniable medical necessity.

Every human life is unique and irreplaceable, and no one should be treated as if his or her life is less valuable than that of another. Any statement of moral principles about how human beings should treat one another, as well as any just legal system, must be based on recognition of the dignity shared by all. The life of the mother is precious and unique, but so is the life of the child in the mother's womb.

Position of Catholic Church in regard to rape or incest, Fr. Paul Tighe spoke as follows: When the pregnancy is the result of incest or of rape, the experience for the girl or the woman is truly

[23]Frederic L. Good and Otis F. Kelly, Marriage, Morals, and Medical Ethics (New York, 1951).

horrific. She may react with resentment, anger and rejection of the pregnancy, which she can feel to be a continuation of the violation of her body. Nevertheless, however abhorrent and degrading the circumstances of the conception, a new human life have come into existence. It is innocent human life, a life given by God to live with God forever, a life, which has a right to be welcomed into the human community. To end this life by abortion is a further violation of the woman's body and may in fact increase her distress. Thus it was clear from the above discussion that most of the Churches were opposed to dealing with the issue of abortion, in the constitution alone. The Church of Ireland favors ... as the only practical possibility at present, the introduction of legislation covering such matters as definitions, protection and appropriate medical intervention, certification of real and substantial risk to the life of the mother and a time limit on lawful termination of pregnancy.

It could be argued that the Roman Catholic Church's teachings that a victim of incest or rape has a right to seek medical help in order to prevent conception are correct. However, the Church's position is that where a pregnancy results, a human life has come into existence, and to end this life by abortion is considered a further violation of the woman's body, which may in fact raises her apprehensions.

2. ETHICAL ISSUE

Ethical issues in relation to abortion have not been insensitive to the above interdependent stress. And, therefore, what is considered right or wrong today in these matters, may not be looked upon sometime later. It implies morality and moral obligations. One has to also realize that what is morally right is not the same as what is legally right or permissible; and, this is true of abortion. Abortion is a peculiarly passionate topic, largely because many people invest their positions with a symbolic weight that transcends immediate social and legal issues. The most obvious examples of this tendency can be found in some segments of the women's liberation movement, on the one hand, and in some factions of those opposed to abortion, on the other. For each the way society solves the abortion problem will be taken to show just what is deepest values are. And those values have implications that extend far beyond abortion. The Women's Liberation movement sees abortion as the most significant liberation of all, from the body and from male domination. The most effective solution to unwanted pregnancy, it removes the final block to full control of reproduction. If reproduction is fully controlled, women will remain in bondage not only with their sexuality, but also with those legions of male chauvinists who use

female sexuality as well to their own domineering ends. By contrast, many of those opposed to abortion see the issue as indicating the kind of respect society will show the most defenseless beings in our midst. If the life of defenseless foetus is not respected, then there is good reason to believe that the most fundamental of all human rights - the right to life - will have been subverted at its core. The test of the humane society is not the respect it pays to the strongest and most articulate, but that which it accords to the weakest and least articulate. Of course, these arguments and symbolic weight they carry simply bypass one another. The opposition seems so fundamental, and the starting premises so different, that any meaningful debate - the kind that leads to give and take, concession and adaptation is ruled out from the start. Moreover, the very charges each side hurls at the other are of a psychologically intolerable nature. No vigorous proponents of abortion are likely to admit, either privately or publicly, that they sanction 'murder'; nor are opponents of abortion likely to admit that they sanction the suppression of women.[24]Abortion performed for the sole purpose of the rejection of a pregnancy so as to avoid a normal birth is perhaps morally always wrong, and more advanced a pregnancy, the more it hurts, were the views held by the people upto the first half of the last centuries. It is only during the last four decades that induced abortion was come to be seen differently. Ethics and values attached to the procedure have undergone a radical change and abortion has come to be liberalized by law in many countries of the world, including India. For convenience, it may be laid down as proposition, most of which should be readily recognizable to any one acquainted with the abortion literature.

[24] Some Ethical Concerns Regarding Abortion. Abortion, Society, and the Law, p.90, 1973.

C. SOCIAL ISSUE

The humanist approach is that there is a need to do everything possible to reduce the rate of abortions. Some abortions, sadly, are related to poor advice or lack of education in family planning. By improving the age at marriage, improving contraception - making it more widely available, improving the socio-economic conditions of girls, women's education, emancipation, and so on; we should be able to reduce the number of unwanted pregnancies and clearly all, or a lot, of the

Humanists do not regard abortion lightly as another form of fertility control; rather, they are staunch supporters of early life education, improving women's social status, and making all forms of family planning, emergency contraception, and so on, in order to reduce the number of induced abortions.

CHAPTER-4

REPRODUCTIVE FREEDOM, INCLUDING THE RIGHT TO ABORTION, IN VIS-A-VIS TO THE RIGHT OF THE UNBORN TO LIVE

"There can be no freedom, equality, or full human dignity and personhood for women until they assert and demand control over their own bodies and reproductive processes" Abortion is a question of individual conscience and deliberate decision for the women involved."[25]

4.1 Introduction

The Universal Declaration of Human Rights was the first major international treaty to clearly recognize economic, social, and cultural rights. The right to life, the most crucial human right, is the greatest human right, and its absence makes all other rights obsolete, worthless, and meaningless. When one's right to life is violated, all other human rights are immediately violated. These rights, it is true, are accessible to all human beings. The question here is whether human embryos and foetuses also have this right. The right to abortion is another contentious subject relating to this fundamental right. As a result, the abortion question is like two sides of the same coin. One side is concerned with women's liberty, choice, dignity, and privacy. The other focuses on the unborn's right to life and liberty. Both sides are legitimate in their own ways[26].These days, it is thought that women's liberation is impossible unless women are granted enough autonomy and discretion in areas of reproduction, abortion, and sterilization. However, granting such a right to women harms the unborn's right to life. As a result, there is a need to resolve the conflict between the two, namely, a pregnant woman's personal liberty and right to destroy the foetus in her womb under any circumstances and at any time, and the

[25] Betty Friedman, "Abortion: A Women's Civil Right" Keynote Speech, First National Conference for Repeal of Abortion Laws, Chicago III, February 14, 1969.2 S.N. "Right to Life and the Unborn Person," 11 (3) IBR 287 (1984).
[26] S.N. "Right to Life and the Unborn Person," 11 (3) IBR 287 (1984).

state's claim to protect the right to life of the unborn on the basis of scientific knowledge and recognition of the foetus as a living person within the womb. In this chapter, we will study the legal provisions that affect a woman's right to abortion.

4.2 Right to Abortion

The most liberalizing feature of gender justice administration is access to sanitary and safe abortion. Abortion, which was previously opposed both legally and religiously, now appears to be one of the necessary requirements for female emancipation.[27]It is a woman's individual right, right to her life, liberty, and the pursuit of happiness, that sanctions her right to have an abortion.[28] Forcing a woman to continue an unwanted pregnancy is not only an attack on her personal autonomy, but also an infringement on her sense of privacy, bodily integrity, and religious liberty. Laws that compel women to have children not only strip women of their physical integrity, but also render them involuntary slaves to foetuses.[29]Forced pregnancy is similar to slavery in many respects, since pregnancy is a hardship that woman must undergo for several months. Once the kid is born, the woman's new tasks and obligations as a mother become irreversible. Following childbirth, the child's requirements outnumber the woman's own demands. This obligation lasts for the finest years of her life. Forced pregnancy is not beneficial, even from the standpoint of the kid. Children born when their mothers were denied abortions were more likely to be arrested for alcoholism, drug misuse, antisocial or criminal conduct, according to studies in the West. A planned kid, on the other hand, may have a stronger benefit and get more particular attention from the parents. Parents may feel great pride in watching their planned child develop, or great disappointment or possibly guilt if their son or daughter does not live up to planned expectations. [30]As the government cannot force a relative of a child suffering from cancer to donate bone marrow or an organ to the child, even if the child is certain to die without the donation. Similarly, the government cannot force a person to use his or her body as a tool to preserve individuals who have already been born, much alone a foetus in the womb. Similarly, how can the government compel a woman to endure a pregnancy that may pose significant health risks for the sake of a foetus? Surely, a foetus cannot have rights superior to those of a person who has already been born. Recognizing

[27] S.N. Sharma, "Pre Conception and Pre Natal Diagnostic Act, 1994: A Study of Its Provisions and Working" Cri LJ Jour 251 (2007).
[28] Manisha Garg, "Right to Abortion," available at: www.legalserviceindia.com/articles/adp_tion.htm.
[29] Reproductive Freedom: A Fundamental Liberty, available at: http://www.lectlaw.com
[30] Everett D. Dyer, Courtship, Marriage, and Family: American Style 285 (The Dorsey Press, Homewood, 1983).

that the sanctity of life has a supreme value in the hierarchy of values, it is nonetheless true that human foetuses cannot claim any rights superior to those of born persons for the following reasons:[31](a) A foetus is not a person; (b) The court does not know 'when life begins'; According to WHO, more than half of all induced abortion fatalities occur in South and Southeast Asia, followed by Sub-Saharan Africa. As a result, illegal abortion is a leading cause of significant health issues and even death among women worldwide. Legal abortion services are few, and it is disgraceful that women have been denied such a fundamental right as the opportunity to assist in child planning or prevention.

4.2.1 Definition of Abortion

Abortion or miscarriage refers to the spontaneous or induced termination of a pregnancy before the baby is independently viable, which is often after the 28th week of pregnancy. Children born a few days before the 28th week are known to have survived with modern care. Medically, abortion refers to the removal of the ovum within the first three months of pregnancy; miscarriage, the removal of the foetus between the fourth and seventh months of pregnancy; and premature delivery, the delivery of a baby after the seventh month of pregnancy but before full term. Miscarriage, abortion, and preterm labor are now legally recognized as equivalent words, referring to any termination of pregnancy at any point prior to confinement.[32] Abortion may be divided into many categories based on the type and circumstances of the abortion. For example, it might be (i) natural, (ii) accidental, (iii) spontaneous, or (iv) artificial or caused abortion. Abortions in the first three categories are not punishable, whereas induced abortion is punishable unless exempted by law.[33]Natural abortion is a very common phenomenon that can occur for a variety of reasons, including poor health, a defect in the mother's generative organs, shock, fear, joy, and so on. Accidental abortion occurs often as a result of trauma caused by accidents. In accidents, the ovum, embryo, or placenta is dislodged from its normal attachment by direct and indirect force. Pathological factors may induce spontaneous abortion when a pregnancy cannot be completed and the uterus empties before the foetus reaches maturity.

[31]Jone Roe v. Henry Wade, 410 U.S. 113 (1973): 35L.Ed. 2d.
[32] K. Modi's Medical Jurisprudence & Toxicology 1013 (Lexis Nexis Butterworth, New Delhi, 2006), edited by Mathiharan and Amrit K. Patnaik.
[33] K. Criminal Law & Criminology 209, D. Gaur (Deep & Deep Publication, New Delhi, 2002).

This may occur due to metabolic conditions or toxin buildup that interferes with embryo development and pregnancy progression. Criminal abortion is the illegal destruction and evacuation of the unborn, and the perpetrator is penalized under criminal law. It is usually induced between the second and third months of pregnancy, but it can be induced between the fourth and fifth months if the woman is certain of her condition. In India, induced abortion is defined in law as any abortion that does not fall under the rules of the Medical Termination of Pregnancy Act 1971, even if performed by qualified doctors, and the doctors are subject to prosecution and punishment.

4.2.2 ABORTION METHODS

- The Abortion Pill- This medicine (mifepristone) is taken in early pregnancy and causes a miscarriage by inhibiting the hormone required for a fertilized egg to implant.
- Vacuum Aspiration Abortion- A tube is introduced through the cervix and up into the womb.
- Evacuation and Curettage- The woman's cervical canal is enlarged and the womb is then emptied by suction or scraped out with a curette.
- Intact Dilation and Extraction ('partial birth abortion')- The embryo is extracted from the vagina and the skull's content are sucked out. The foetus is killed as a result of this.
- The 'Morning after Pill' and Intra Uterine Device- These are occasionally classified in medical papers as kinds of abortion, although under the law, they constitute contraception rather than abortion.

4.2.3 Abortion as a Fundamental Human Right

Globally, reproductive rights are the most pressing need of human society, both in terms of human rights and concern for women's health. Without reproductive freedom, including the right to abortion, women will never achieve equality with men and will be denied benefits related to their health, employment, education, and roles in family affairs. Reproductive rights are universally recognized as vital to furthering women's human rights and supporting development. The United Nations has held that reproductive freedom is a fundamental human right from its founding. The United Nations Conference on Human Rights in Tehran in 1968 recognized family planning as a fundamental human right.

The Plan of Action of the 1974 World Population Conference in Bucharest affirmed the essential human right of couples to choose the number of children they have freely. The 1994 International Conference on Population and Development (ICPD) in Cairo and the 1995 Fourth World UN Conference on Women in Beijing provided additional support for the notion that women's reproductive rights are human rights. Treaty-monitoring bodies' interpretations and jurisprudence have also played an important role in advancing women's reproductive rights.[34] Regional human rights treaties such as the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Inter-American Commission, and the African Commission on Human and Peoples' Rights have all focused on the right to abortion. Although international and regional human rights conventions and treaty-monitoring bodies have yet to explicitly address the issue of abortion on request, there is solid textual and interpretive support for the above-mentioned rights, which have been used by national legislatures and courts around the world to guarantee a woman's right to abortion, and which can be used by advocates to promote women's right to abortion on request.[35] However, several countries have made measures to enshrine abortion rights in their constitutions. In recent years, governments throughout the globe have recognized and vowed to extend reproductive rights to new levels. Formal laws and policies are important signs of the government's commitment to advancing reproductive rights. Every woman has a full right to manage her body, which is sometimes referred to as physical rights.

4.3 The Indian Legal Scenario

In India, the Central Family Planning Board, a policy-making organization, created an 11member committee in 1964 under the direction of Shantilal Shah, Maharashtra's health minister, and the committee report, issued in 1966, backed legal abortion. The Central Family Planning Council, which included of health ministers from 17 states, adopted the committee's report with minor adjustments in 1967. The Medical Termination of Pregnancy Bill, 1969 was passed in parliament, followed by the president's assent in 1971, and the Medical Termination of Pregnancy Act, 1971 was enforced on April 1, 1972. Implemented rules and regulations

[34] Centre for Reproductive Rights, "Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights" available at: http://www.reproductiverights.org/pd/pub_bo_tmb_full.pdf

[35] Jaime M. Gher and Christine Zampas, "Abortion as a Human Right – International and Regional Standards" 8(2) HRLR 249-294 (2008).

were again revised in 1975 to eliminate time-consuming procedures for the approval of the place and to make services more readily available.

4.4 Grounds for Termination of Pregnancy

The MTP Act, 1971 guarantees a woman's right in India to terminate an unintended pregnancy, empowering her to choose whether to continue her pregnancy or terminate it, and thus saving many women from "forced motherhood" and "inflicted pregnancy."[36] The Act authorizes a registered medical practitioner to terminate a woman's pregnancy on the prescribed grounds when the pregnancy does not exceed a period of twelve weeks. However, in the case of a pregnancy lasting more than twelve weeks but less than twenty weeks, the concurring opinion of at least two registered medical practitioners formed in good faith that:- The continuation of the pregnancy would involve a risk to the pregnant woman's life, or- A risk of grave injury to her physical or mental health; or- If the pregnancy is caused by rape; or There exists a substantial risk that, if the child were born, it would suffer Most importantly, the revised MTP Rules permitted medical abortion.

4.5 Is each Spouse/Partner entitled to an abortion unilaterally?

Under the Medical Termination of Pregnancy Act, 1971, a woman can have her pregnancy terminated without the consent of her husband in certain circumstances; consent of the guardian is required in cases where the girl is under the age of eighteen or a lunatic.[37]According to the revised rules, a woman desiring to abort an unwanted pregnancy can walk into a hospital or recognized institutions offering the facility and, after filling out a form, have the pregnancy terminated.[38]

In Smt. In **Satya v. Shri Ram[39]**, the Punjab and Haryana High Court ruled that terminating a pregnancy at the request of the woman but without the agreement of her husband amounted to cruelty. In its decision, the High Court referred to the English case, Forbes v. Forbes[40], and stated: "If the wife deliberately and persistently refuses to satisfy her husband and his family

[36] K. Kannan and Karunakaran Mathiharan (eds.), Modi Textbook of Medical Jurisprudence and Toxicology 718 (Lexis Nexis Butterworth, Nagpur, 2012).
[37] Section 3(4) (a) of Medical Termination of Pregnancy Act, 1971.
[38] Paras Divas, Dr. Paras Diwan on Hindu Law 843 (Orient Publishing Co., Delhi, 2006).
[39]AIR 1983 Punjab & Har. 252.
[40] AIR 1987 Del 86.

members' desire to have a child in the family and dashed their hope by resorting to termination of pregnancy, the wife's conduct undoubtedly amounted to infliction of mental cruelty and the husband is entitled to a decree of divorce." The husband was awarded divorce when it was determined that abortion in the first pregnancy without the husband's permission constituted cruelty. This means that a woman cannot get an abortion without her husband's permission. However, what if a husband insisted that his wife have an abortion? In terms of the "woman's right" argument, which would leave the choice entirely up to her, he would not have the right to make such a demand. However, there are numerous family circumstances in which the husband would be responsible for the economic maintenance of the kid to whom she gives birth. A basic concept of a free society is that individuals who may be impacted by the actions and choices of others should have a say in those decisions. If a woman should not be forced to bear an undesired kid, on what grounds should a father be obliged to stand silently throughout his wife's pregnancy? Knowing that he will shoulder as much or more of the responsibility of raising and maintaining the kid as she will. Once again, it is a matter of highlighting some of the unexplored issues in the abortion-on-request position.[41]A woman has complete freedom to conceive or not to conceive. In accordance with the MTP Act, a woman who is a major can terminate the pregnancy, but a minor girl cannot approach a doctor for abortion on her own. Consent from a parent, guardian, or husband is necessary. However, if the underage girl decides to carry the pregnancy to term and give birth to a child, the father's agreement is irrelevant. The Madras High Court issued a historic decision[42], upholding the legitimacy of a teenage girl's consent in the case of maintaining pregnancy. In this case, the father of a juvenile girl petitioned the Madras High Court for a directive from the court to terminate his underage daughter's pregnancy. The High Court rejected the writ petition, ruling that abortion cannot be imposed on a juvenile girl who is prepared to have the child. So, under the Medical Termination of Pregnancy Act of 1971, the father's approval is required only when the minor girl chooses to terminate her pregnancy; when the minor girl decides to carry the pregnancy to term and give birth to a child, the father's consent is irrelevant. This court judgment may be upsetting for some dads who would be impotent in such circumstances and want the legislation amended to allow them some influence over their young daughters' reproductive functions.

[41] Daniel Callahan, Abortion: Law, Choice and Morality 466 (The MacMillan Company, London 1970).
[42] G. Krishnan v. G. Rajan alias Madipu Rajan, (1994) 1 LW (Cri.) 16 (Mad) (DB).

4.6 Can the Husband Force the Wife to Carry the Child?

In a historic decision, the Punjab and Haryana High Court decided unequivocally that a husband cannot coerce his wife to conceive and give birth to his child. While emphasizing that such limitless connections, too, have bounds, the High Court was categorical in stating while intimacy is one thing, giving birth to a child is another, and she cannot be forced to experience it unwillingly. According to Justice Jitendra Chauhan of the Punjab and Haryana High Court, "simple assent to conjugal rights does not imply permission to have a child for her husband The woman is the best judgment and should decide whether to maintain the pregnancy or have it terminated."[43]

4.7 Right to Life

Every woman has the right to govern her own body, but the crucial issue is whether she has the right to control the fate of another human being, namely the baby in the womb. Pro-life proponents believe that God, not the expectant woman of an undesired child, is the source of life and death. They oppose to birth control and abortion on religious and other reasons. Each, they claim, is unnatural and undermines God's purpose for mankind. Every life, prospective or existing, is holy in their eyes. A sin against God is to live before or after birth. They argue that abortion leads to the dissolution of marriage and consequently society. It allows males to shirk their obligations and compel women to murder their children.[44] As a result, a foetus cannot be denied life. Abortion is an act of violence that kills a baby who cannot protect or defend itself. As a result, abortion is an act of violence that kills a baby who cannot protect or defend itself. Sir William Blackstone said that "life is the immediate gift of God, a natural right inherent by in every individual, and it begins in contemplation at law as soon as the infant is able to move in its mother's womb."[45]

[43] Dr. Mangla Dogra and others v. Anil Kumar Malhotra and Others, C. R. No. 6337 of 2011.
[44] Alexander Sanger, Beyond Choice: Reproductive Freedom in the 21st Century 80 (Public Affairs, New York, 2004).
[45] Lord Denning, The Closing Chapter 44 (Aditya Books, New Delhi, 1993).

4.7.1 When does life start?

The essential question in the discussion has often been the moment at which life is thought to begin. Abortion is technically defined as the elimination of life after conception but before birth. Life must have originated between these two points of no return. However, the literature demonstrates that life sciences have not provided any well-defined rules to answer these critical questions. According to some biologists, life begins with fertilization, which is the beginning of human life. As a result, they claim that foetal personhood starts when sperm and egg combine, regardless of how that occurs. Others believe that life starts in the eighth week, when the embryo is beginning the transformation to a foetus and is clearly recognizable as a human person. Another point of view rejects any belief in a fertilized ovum being a human life in the common sense understanding of the word. Human life, according to this viewpoint, starts at birth. Or, more technically, when a foetus has matured enough to be capable of survival if removed from the mother's womb. That human existence starts at conception is a theological principle that makes no claim to scientific truth. "Each of these two perspectives stands at the extremes, posing a quandary for legislators. If one believes that life starts at conception, then interfering with the embryo at any point of its foetal existence may be considered immoral, unless one believes that the laws of ethics do not recognize the right to life. On the other hand, the opposing viewpoint holds that life starts only at birth. This generates a new kind of quandary. One may argue that if there was no life before birth, then all types of legal prohibitions and punishments dealing with foetal intervention become irrelevant, save to the limited degree of prohibiting such interference in the benefit of the mother's health. Whether or whether a woman should be permitted to abort falls almost totally within the realm of individual therapeutic concerns, according to this theory. It no longer has any ethical or legal significance.

4.7.2 Is a foetus or an unborn child a person?

Constitutions across the world recognize the sacredness of life, yet have failed to sufficiently safeguard the life of the embryo. There are several situations to address the issue of whether the foetus may be called a human being. In **Dietrich v. Northampton**[46], a woman in her second trimester of pregnancy was wounded by a fall from a grossly faulty roads in the year 1884. The

[47].138 Mass 44, 52 Am. Resp. 242.

infant was born prematurely and died within a few minutes of being born, and the causal link between the fall and the child's death was proven immediately. Given Lord Coke's dictum that if a woman is quick with child and the child is born alive and later dies as a result of prenatal poisoning or battery, the act of causing such poisoning or battery would amount to murder, the plaintiff contended that the defendants were liable for the child's death in the instant case. However, Justice Holmes disregarded this argument as being relevant in criminal cases and not in civil or tort suits. In the absence of any precedent conferring a prenatal cause of action in tort on the kid, it was decided that it was a clear and unmistakable principle of common law that the unborn child was not a 'person' under the law but a part of the mother with no independent entity or existence before birth. Furthermore, in the aforementioned case, Justice Holmes said in a dicta that a newborn, even if it survived, could not establish a cause of action in respect of a prenatal damage. This existence was compatible with the utter denial of any kind of existence under law to the unborn person. In an English case **R v. Tait**[47], the Court of Appeal dismissed the conviction of a burglar on the argument that 'threat to murder a foetus' is not an act aimed against the 'another person'. In the conventional sense, the foetus was not 'another person' apart from its mother. In another instance, R. Midwives who attended the delivery of a foetus who did not survive birth were prosecuted with criminal negligence causing death to another person (foetus) in Sullivan[48]. The trial Court's conviction was overturned by the British Columbia Court of Appeal on the grounds that a foetus that was no longer alive after being removed from its mother's body was not a "person," but the court substituted a verdict of guilty of criminal negligence causing bodily harm to another person, the pregnant woman. The foetus in the birth canal was discovered to be a part of the mother, hence damage to the unborn equals injury to the mother.[49] The American Supreme Court in **Roe v. Wade**[50] decided that the foetus is not a 'person' within the sense of the fourteenth amendment. As a result, the right to life does not begin at conception. According to the Supreme Court, a woman's right to terminate her pregnancy is such that the state may not restrict abortion until the foetus achieves viability. This method is predicated on the underlying idea that human existence does not begin until viability. We were debating whether or not the foetus is a person in the preceding conversation. But now the issue is whether a foetus has the right to be born alive and, as such, to have an autonomous personality distinct from its mother.

[47] (1989) 3 WLR 891.
[48] (1988) 43 CCC 3d 65.
[49] Dietrich v. Northamption, 138 Mass 14, (1884).
[50] 410 U.S. 113 (1973).

The Ontario High Court examined this issue thoroughly in **Medhurst v. Medhurst**, concluding that an unborn child is not a person and that any rights accorded to the foetus are held contingent on the foetus acquiring legal personality upon being born alive later.[51] In accordance with the principles of common law jurisprudence, courts in England have held that: the foetus has no right of action, no right at all, until birth. There is no difference between hypothetical conception of the child who may have succession rights by what has been called a 'fictional construction,' but the child must be subsequently born alive. In India, the right to life is guaranteed to every person under the Indian Constitution. However, the idea of personhood complicates the legal status of a foetus. The age of the child is counted from the child's birth, as is well known, and the Indian Penal Code defines "man as male human being of any age and woman as female human being of any age." The unborn child is not included when defining person under the Indian Penal Code, 1860, as well as the Indian Constitution. When a kid is born, it becomes a personality and is legally protected. The question of whether the unborn has the same rights as a born child has emerged. It refers to whether an unborn child has the right to inherit or sue, or, more broadly, if it has the right to life as guaranteed by the Constitution. However, the answer is that they do not have direct rights, however in a few cases, they do have rights indirectly via their mother. Although there are a number of legislations that indirectly safeguard the life of a foetus, such as under Hindu law, a son has the right to reopen the division of ancestral property that occurred when he was in his mother's womb without any portion designated for him. According to Section 20 of the Hindu Succession Act, 1956, "a child who was in the womb at the time of the death of an intestate and who any person born alive shall have the same right to inherit to the intestate as if he or she had been born, before the death of the intestate, and the inheritance incurred shall be deemed to vest in such a case with effect from the date of the death of the intestate"[52]. Prior interest is generated first in favor of a living person, and then the right is vested in the unborn when it is born alive. An foetus cannot make a choice since it lacks the ability to choose. As a result, property rights are a contingent interest in the unborn. According to Section 20, when an interest in property is formed for an unborn child by a transfer, he obtains a vested interest upon his birth. The contrast formed in the Indian Penal Code (Section 312-316) kid, and between the unborn child and quick unborn child, serves to indicate that a woman is with child during the whole length of

[51] Bonda, "The Impact of Constitutional Law on Protection of Unborn Life: Some Comparative Remarks" 6 Human Rights 234-235 (1977).

[52] Caesar Roy, "Position of Unborn Child in India: needs for a New Legislation" 100 AIR 60 (2013).

her pregnancy, and a child is a person having life, both lexically and logically. Some pro-life proponents say that the unborn child has legal protections while in the mother's womb. For e.g. Section 416 of the Code of Criminal Procedure states that the High Court may order that the execution of a pregnant woman's death sentence be postponed or commute the sentence to life imprisonment, thereby indirectly recognizing the right to life of the foetus. However, Section 5 of The Transfer of Property Act, 1882 states that property can be transferred only between two living people. This implies that the transferee must also exist at the time of the transfer. There is a legitimate reason why property cannot be transferred directly to an unborn person. However, since the term 'person' is used, it seems questionable that Article 21 of the Constitution would embrace the life of a foetus. As a result, no one can argue that a foetus or kid in the mother's womb is not a natural person. Judicial statements are also inconclusive and varied among jurisdictions. Courts often avoid addressing this question because to the intricate considerations that emerge in evaluating this question, such as when a foetus attains personhood. This issue perplexes Courts all over the world.[53]

4.8 Right to Abortion vs. Right to Life of the Unborn

According to Barbara Sykes Wright, a member of the National Organization for Women (NOW), "I and thousands upon thousands of women like me believe that any law forbidding an abortion under good medical conditions is immoral and also unconstitutional, because it violates her right to control her property, her body, as well as her life, liberty, and happiness." The situation of the unborn and the pregnant woman is often described as a clash of rights - foetal rights vs. pregnant lady rights. Ronald Dworkin explains the relationship between a pregnant woman and her foetus as "her foetus is not merely 'in her' as an inanimate object might be, or something alive but alien that has been transplanted into her body." It is 'of her and is hers more than anyone else because it is her creation and responsibility more than anyone else's; and it is alive because she has made it come alive." According to Dworkin are issues of personal privacy and autonomy over personal choices. He contends that most people believe that human life is essentially important, and that its annihilation is always a terrible thing. It does not, however, follow that all forms of human existence should have rights. He contends that since most people believe in the sacredness of human life, abortion is always seen as a morally significant issue. He identifies procreative autonomy - the freedom to choose

[53] K.C. Jena, “Female Foeticide and Infanticide in India: The Emerging Trend” 3 Law Profiles 21(Feb. 2012).

reproductive options - as a critical aspect of the concept of human dignity, which is a feature of all democratic societies, and as one of the "critical interests" of a person's life.[54]As a result, the issue has become a source of contention among advocacy groups belonging to one of two camps. Those who oppose legal limitations on abortion are known as pro-choice activists, while those who support abortion ban are known as pro-life advocates. Pro-life people typically think that human life should be respected from fertilization or implantation until natural death. They regard abortion to be murder since a human egg or foetus is an innocent human being who has the right to be born. As a result, God, not the parents, is the source of life and death. Pro-choice, on the other hand, is being in support of enabling women to choose whether or not to have a child. She should have the option to be pregnant or not, and if she is pregnant, she should have the choice to abort the kid or terminate the pregnancy. As a result, "pro-choice" proponents believe that people should have unrestricted autonomy over their reproductive systems as long as they do not violate the autonomy of others. Pro-choice activists believe that women should have entire control over fertility and pregnancy. It is a woman's personal decision whether or not to have children since it impacts her body, personal health, and future. As a result, they advocate for contraception and abortion to be legally available and accessible to anyone who wish to use them without interference from others or the government. These are two extreme points of view. One viewpoint condemns abortion, while the other allows an expecting woman to terminate her pregnancy even after the foetus has reached viability. It is ironic that the pro-life movement refuses to address the rights of the mother. It is not just an issue of a child's right to be born, but also of a mother's right to good health and the right to life.[55]

4.9 Arguments Against Abortion

The pro-life advocates who favor abortion prohibition make the following arguments:

- The unborn human is a person with a certain natural inherent capacity (i.e., her essence), she will function as a person in the near future, just as the reversibly comatose and the temporarily unconscious will do because of their natural inherent capacity. The unborn are not potential people, but people with a lot of potential.
- Furthermore, abortion is not socially or ethically acceptable in certain countries. Killing innocent people is a crime, and the foetus is also an innocent life, and by having an abortion,

[54] R. Dworkin, Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom 55, 106, 200-02 (Vintage Books, New York, 1994).

[55] Vidya Bhushan Rawat, "'Pro-Life' Also Means a Mother's Right to Life" 50 Mainstream 17 (Dec. 1, 2012).

the foetal experiences enormous anguish. As a result, it should be prohibited. However, this argument no longer holds water because doctors now administer an injection into the foetus to slow its heart until it stops, allowing the foetus to be pain-free.

- Many women suffer significant emotional trauma after having an abortion.
- There is also some evidence that having an abortion may increase a woman's risk of breast cancer later in life. Other risks include uterine and Fallopian tube damage and infection, which renders a woman infertile. Aborting foetuses because they may be disabled sends an implicit message of rejection to people with disabilities
- Another argument is that an embryo (or, in later stages of development, a foetus) is a human being, entitled to protection, from the moment of conception and, thus, has a right to life that must be respected. Abortion is homicide, according to this argument.

4.10 Arguments in favor of Abortion

Every woman has the right to manage her own body; no one should be forced to carry or terminate her pregnancy against her desire. There can be no equality until the woman has the freedom to manage her fertility.

- Our right to privacy is broad enough to cover the right to marry, build a family, have or not have children, be or not be a parent, and so on, without undue government intrusion. As a result, abortion is a matter of personal privacy.
- If a woman is prohibited from lawfully aborting her child, she will have to resort to illegal abortion, resulting in many deaths as they are frequently performed by those who are not competent to do so
- In comparison to a married woman, an unmarried girl is even more exposed to this type of risk because there is a compelling factor to abort the child. It also encourages police corruption.
- When an abortion is performed to save the woman's life, the logic is not that the unborn is less valuable than the mother, but that if no action is done, both would die. Aborting the foetus saves the mother's life.

- Where the woman is not permitted to abort the foetus and is forced to give birth to the kid, then abandons the new infant. So, what is the point of these regulations that prohibit abortion because they endanger the child's life? Thus, it is preferable to abort at an earlier stage.
- If abortion is legalized, it would aid in population management, which is one of India's current concerns.

Following a careful examination of the pros and cons of the entire issue, as well as a pragmatic assessment of the socioeconomic and legal issues involved in the case, it may be argued that a pregnant woman should have "personal liberty" to destroy her foetus on her own if she finds it intolerable. Forcing a woman to continue an unwanted pregnancy is to impose a form of slavery on her, or at the very least to violate her sense of self-respect and dignity. The foetus has a right to live, but not to be retained in a woman's body against her will. After all, the unborn has less rights to life than the host, the mother. As a result, the foetus in utero is not, in the common sense, a separate person from its mother. After all, pregnant women are not two equal individuals with equal rights; they are a unique creature that cannot adapt to individualism- a life inside a life, one dependent on the other. So, the unborn is completely reliant on the mother, and it is the mother who cares for him on a daily basis. Even if the foetus is a person, it may be argued that pregnant women have the right to exercise self-defense to defend themselves from the physical invasion of an undesired pregnancy.[56] If the woman does not want to give birth to the kid, that is her choice. If she believes she is incapable of caring for a kid, she should get an abortion. As a result, abortion is an issue that should be left to the mother's discretion. It is said that a woman is second only to God in providing the greatest possible care for her kid without expecting anything in return. If she chooses abortion, it might be due to ignorance, carelessness, or intentional behavior. Nobody would choose abortion if they were in a good mood. It's her body, and she has the right to protect herself first. Abortion is an issue that should be left to the mother's discretion since it is a woman's right to safeguard her life and should only be utilized in extreme situations. It is also claimed that if abortion is not permitted on demand, a woman who does not want to carry her pregnancy but is compelled to do so and then abandons the newborn child is committing infanticide. This would be more harmful to the baby's life. As a result, if there is no chance of having a living child with all human potential, it is preferable to prevent such a child from being born and thus save it from earthly miseries.

[56] Judith Jarvis Thomson, “A Defense of Abortion” 1 Philosophy and Public Affairs 47 (1971).

As a result, it is argued that many social evils such as infanticide and exposure of new born infants can only be minimized and prevented by making abortion legal, safe, and accessible to all. Keeping the lesser of two evils in mind, it is preferable to enable a woman to terminate her pregnancy at an earlier time. However, before allowing a woman to terminate her pregnancy, it should be made mandatory for her to learn the consequences of abortion by attending doctor's counseling. Rather than aborting a foetus, a woman should be made well aware of the various contraceptive means/methods available for avoiding pregnancy. If a woman chooses one of these options, she will not have to submit her body to the strain of pregnancy. Furthermore, the state might ban abortion only if it is willing and capable of taking full responsibility for the kid. However, there is abundant data to suggest that many policies and plans are developed for the welfare of children, but they are not fully implemented, and children are not provided equal opportunity for growth. Because the state cannot care for the child and the child is frequently left to die on the streets, it is preferable to abort the unborn child because the word "life" in Article 21 of the Constitution has been interpreted to mean "life with dignity." The researcher believes that if the government is truly concerned about the welfare of the unborn, it can provide appropriate means to assist women in the process of bearing and rearing children.

CHAPTER 5

COMPERATIVE STUDY OF LAWS BETWEEN, THE UNITED STATES, UNITED KINGDOM AND IRELAND

5.1 Abortion in the United States

Among Western nations, the United States presents a diverse picture of abortion legislation and practices. Because abortion is not a federal issue under the United States Constitutions, states have adopted their own legislation. Until the mid-nineteenth century, most of the United States' abortion laws were based on pre-existing English Common Law.[57] Connecticut was the first state to implement abortion legislation in 1821, adopting that portion of Lord Ellen borough's Act that dealt with women who were 'quick' with a child. Abortion before to quickening was deemed a criminal and remained so until 1860.

In 1828, the state of New York established a statute that served as a model for early anti-abortion laws in two ways. First, it forbade the destruction of both an unquickened and a quick foetus. It reduced the former to a misdemeanor, but increased the latter to second-degree manslaughter. Second, it accepted the notion of therapeutic abortion, stating that an abortion was justified if it was required to save the mother's life or had been recommended by two doctors. Only eight American states had abortion laws in place by 1840. Following the Civil War, states began to replace common law with abortion laws. The majority of these regulations dealt harshly with abortions after quickening but were tolerant with abortion legislation. The majority of these legislation dealt harshly with abortions conducted after quickening but were liberal with those performed before quickening. The majority of these legislation also made attempting to commit a crime criminal. Many legislation included an exemption for abortions deemed required by one or more physicians to preserve the mother's life.

[57] Roe v. Wade, 41 L.W. 4213. 4221.

This exemption quickly vanished and was replaced by other procedural requirements. The 'quickening' difference faded from most states' legislation between the middle and late nineteenth century, although the severity of the offences and fines were increased. By 1950, a huge majority of states had prohibited abortions unless when required to save the mother's life. However, Alabama and the District of Columbia authorized abortions to protect the expectant mother's health.[58] Some other states approved abortions that were not "unlawfully" done or "without lawful justification," and left the interpretation of these terms to the law courts.[59]
The American Law Institute (ALI) recommended liberal abortion regulation in its model Penal Code in 1955. It proposed that abortion be performed if a licensed physician believes that there is a substantial risk that the mother's physical or mental health would be gravely harmed by the continuation of the pregnancy, or that the child would be born with grave physical or mental defect, or if the pregnancy resulted from forcible or statutory rape, incest, or other felonious intercourse. The Supreme Court has favored the liberalization of abortion laws by invalidating restrictive state legislations. After its decisions in the **Roe and Doe cases,** anti-abortion forces in the state of Connecticut and fourteen other states joined amicus curiae in a later petition to the Court for a rehearing "on the basis of newly offered scientific evidence on when the life begins." The Court refused the request to revisit its previous decisions.

Georgia, Idaho, Indiana, South Dakota, Utah, North Dakota, and Island have all passed abortion laws in accordance with the Supreme Court's rulings.[60] Some other states have passed laws allowing a doctor to refuse abortion on moral or religious grounds in writing. Some state laws have no provision for such rejection. However, it seems that the Court's findings in the Roe and Doe cases did not find favor with all members of Congress. Indirect and futile attempts have been made to mitigate the consequences of the judicial attitude.

5.2 Abortion in the United Kingdom

In its early days, the English common law that dominated in the United States remained uncertain as to whether abortion of a woman 'quick' with child was an indictable crime. It is still unclear whether abortion of a 'quick' foetus was a felony or a lessor crime. Bracton considered it was homicide in the early thirteenth century, but afterwards the general opinion

[58] Ala. Code. Tit. 14 (1958), D.C. Code Ann. (1967).
[59] Mass. Gen Laws Ann. (1970).; N.J. Rev. State Ann. (1969), Pa. Stat. Ann. tit.
(1963).
[60] 2:3Family Planning / Population Reporter 47 (1973 Patricia Donovan ed. Washington).

was that it was at most a minor crime. Coca believed that abortion of a woman "quick with child" was a serious misprision and not murder. According to Blackstone, abortion after' quickening' constituted man-slaughter rather than murder. "Modern Law" took a more lenient stance.[61] It has recently been argued that abortion even after 'quickening' was not established as a common law crime. Abortion was made a statutory crime in England in 1803.[62] The statute made abortion of a woman quick with child a capital crime but provided less severe punishment for the felony of abortion before 'quickening'. The 'quickening' difference was preserved by this statute. This difference was maintained until 1828, when the death sentence for this offence was abolished in 1837. It did not return in the Offences Against the Person Act of 1861, which was a fundamental anti-abortion statute until 1967, when abortion was legalized. The Infant Life (Preservation) Act of 1929 emphasizes the preservation of "the life capable of being born alive," and it makes causing the death of a "child to be born" a crime. Abortion in good faith to save the mother's life was an acceptable defense. In, a major development in abortion legislation occurred. v. Bourne , which responded affirmatively whether an abortion essential to save the pregnant woman's life was free from criminal penalties under the Offences Against the Person Act of 1861. The learned judge determined in his jury instructions that the word "unlawful" employed in the Act imported the same meaning represented by the provision of the Act of 1929, despite the fact that there was no mention of saving the mother's life in the Act of 1861. He told the jury to acquit Dr. Bourne because he understood the words "preserving the life of the mother" broadly, that is, "in a reasonable sense." Following the Bourne judgment, it was conceivable to declare with considerable confidence that an obvious danger to the mother's health was a valid cause for induced abortion. Though it remained unclear how far and in what manner this exemption may be applied. The Bourne ruling did not apply to circumstances in where there was a possibility of deformities in the children to be bora.

Despite abortion laws in England, it was believed that 10,000 to 250,000 illegal abortions were done each year. The Abortion Law Reform Association stated this statistic was 100,000 every year and exploited it to support the reform movement. The Abortion Act was passed in 1967. The Act only applies to England, Wales, and Scotland, not Northern Ireland. The Act states that a licensed physician may terminate a pregnancy based on the good faith opinion of two other licensed physicians on one of the following grounds: (a) that the continuation of the pregnancy would put the pregnant woman's life or any existing children in her family than if

[61]I Blackstone :Commentaries 129-130 (1765).
[62] Lord Ellen Borough's Act, 43 Geo. 3c. 58.

the pregnancy were to be terminated; or (b) that there is a substantial risk that the child would suffer from such physical or mental ailment if the child were born. The pregnant woman's actual or reasonably foreseeable environment may be considered in determining whether the pregnancy should be terminated. Abortions are preferred before the foetus becomes viable because the Infant Life (Preservation) Act, 1929 protects the child after twenty-eight weeks. Abortion is legal after this time solely to save the mother's life. Except in emergency situations, all abortions should be performed in a national health system facility. However, a doctor is not permitted to excuse himself on this basis in order to save a pregnant woman's life or avoid serious harm to her bodily or mental health. The concurrence of two registered medical practitioners is waived for pregnancy termination if a doctor reaches a good-faith view that the abortion is urgently essential to preserve the mother's life or to avoid injury to her bodily or mental health. The Act states that no one shall be subject to any contractual or statutory duty for any treatment approved by the Act to which he has a conscientious objection. The Act does not impose a residency requirement. As a result, a considerable number of international women visit England to undergo abortions, and various scandals have been recorded. The abortion capital of the world, according to detractors of the Act, is London. The surge in abortions creates overcrowding in hospitals with limited beds. In certain regions, pregnant women must wait a long time to be terminated, risking going past the twelve week of pregnancy. In this circumstance, impoverished women may be forced to get illegal abortions. The wealthy ladies may use the services of private nursing homes or the private section of a hospital.

Mrs. Justice Lane, Britain's first female High Court Judge, chaired a commission to assess the operation of the British Abortion Act, 1967. The inquiry's goal was to analyze how the legislation was being applied rather than to argue its core foundations. The committee unanimously concluded in its report that the "gains facilitated by the Act have far outweighed any disadvantages" and that abortions performed under the Act have decreased individual sufferings rapidly. The committee discovered that gynecological patient waiting lists had actually reduced since the Act was approved. The committee also made a few additional points, such as the fact that abortion should be conducted as soon as feasible. Abortion beyond twenty-four weeks of gestation should be for inducement of delivery since contemporary preterm care may save the foetus's life. Secondly, "outpatient abortions should be performed only in hospitals that have full back-up facilities to deal with complications." Thirdly, sterilization should not be a condition precedent for abortion, because the committee took serious note of the cases where even unmarried women were subjected to this condition. Fourthly, there should be careful assessment before the abortion operation is performed. When an abortion is

performed, there should be counseling before and after the operation. Contraceptives should be adequately accessible. Fifthly, almost one third of the total abortions performed under the Act were on foreign women. It would be legally difficult and perhaps wrong to discriminate against the foreign women and sixthly, abuses which do exist would be alleviated by tighter licensing control and the licensing of abortion referral agencies. 22,300 abortions were performed on the resident women in England and Wales under the Act, in 1968 (27 April – 31 December). The number rose to 108,600 in 1972. The abortion rates per 1000 women aged 15-44 years and the abortion ratio per 1000 live births have been similar in recent years to those reported from Denmark, Norway, Sweden and the United States.[63]The MTP Act of India is modeled practically on the lines of British Abortion Act. Like its British counterpart it imposes no residential requirement but unlike the latter it does not have a conscience clause under which a doctor may refuse to perform an abortion operation. The MTP Act also differs from the British Act in that the former contains for the permissible abortion an additional ground of failure of device used by the spouse to limit the number of children and that the apprehended injury to the physical and mental health of the pregnant woman must be "grave".

Section 58 of the Act of 1861 (subject to Abortion Act 1967 and Human Fertilization and Embryology Act 1990 section 37) prohibits attempt to procure miscarriage from any time after the conception of the child until its birth.[64]The section covers two situations, first, where a pregnant woman administers to herself any poison or noxious thing or uses any instruments or other means to procure her own miscarriage and second, where anyone else unlawfully procures abortion whether the woman is or is not pregnant. Punishment under the section on conviction may extend upto imprisonment for life. Section 59 punishes supply or procuring of noxious drugs or instruments knowing it to be unlawfully used for causing abortion with imprisonment which may extend upto five years. Allied to the crime of miscarriage is the statutory offence – the Infant Life (Preservation) Act 1929. The Act is aimed at protecting the destruction of child. Section I of the Act as amended by the Criminal Justice Act 1948 states. Any person who, with the objective of destroying the life of a kid capable of being born alive, causes a child to die before it has an existence independent of its mother, done in good faith for the sole purpose of saving the mother's life shall be guilty and shall be liable on conviction to imprisonment for life.

[63]Christopher Tietze and Deborah A. Dawson, "Induced Abortion : A Factbook,"14Reports on Population/Family Planning 19 (1973 New York).
[64]See. Offences Against the Person Act 1861. s. 58.

Owing to the close proximity between the offence of miscarriage (Act of 1861) and child destruction (Act of 1929) the two offences may overlap at times. For instance, procuring a miscarriage so as to kill a child capable of being born alive any fall under the Act of 1861 as well as the Act of 1929. To overcome such an eventuality, sub-section 2 to section 2 of the Act of 1929 provides that where upon the trial of any person for, (i) the murder or manslaughter of any child, [65] or (ii) infanticide, [66]or (iii) an offence under section 58 of the Offences Against the Person Act 1861, the jury are of opinion that the person charged is not guilty of any of the offences mentioned therein, but it is shown by the evidence that accused is guilty of the offence of child destruction, he may be convicted accordingly.[67] An apparently noticeable development in the English law was in the case of **Rex v. Bourne**, in which the court apparently answered in the affirmative the question whether an abortion necessary to preserve the life of the pregnant woman was exempted from criminal liability under the Act of 1861. In the impugned case a girl under fifteen, who was criminally assaulted in the most revolting circumstances, became pregnant. Bourne, an eminent obstetrics surgeon and gynaecologist, thought that the operation ought to be performed in view of the age of the girl and the fact that she had been raped with great violence and so he terminated the pregnancy. Bourne was charged under section 58 of the Offences against the Person Act 1861 for unlawfully procuring the abortion of the girl. While construing the provisions of section 58 of the Act of 1861, the court referred to the Infant Life (Preservation) Act 1929 which provides punishment for child destruction. Section 1(I) of the Act of 1929 makes an intent to destroy the life of a child capable of being born alive[68] and cause it by any willful act to die before it has an existence independent of its mother liable on conviction to imprisonment for life, unless it is proved that the act which caused the death was not done in good faith for the purpose only of preserving the life of the mother.

Justice MacNaughten who delivered the judgment observed, that though the law with regard to procuring of an abortion under section 59 of the Act of 1861, under which the accused was charged, did not expressly incorporate the words, i.e. 'for the purpose only of preserving the life of the mother', they represent the common law and were implicit by the words "unlawful" occurring in the impugned section Justice MacNaughten accordingly, said :Those words for

[65]Offences Against the Person Act s. 10 provides for trial of murder and manslaughter.
[66]The Infanticide Act 1929 provides for punishment for causing death of child under the age of twelve months.
[67]Smith and Hogan, (Criminal law 364 16th ed. 1988) See, Seaborne Davis "The Law of Abortion and Necessity", M... L.R. (1938-39), 58 L.Q.R. 472.
[68]See, Infant Life (Preservation) Act 1929, s. 1(2).

the purpose only of preserving the life of the mother ought to be construed in a reasonable sense, and, if the doctor is of if the jury believes, on reasonable grounds and with adequate knowledge, that the continuation of the pregnancy will result in the woman becoming a physical or mental wreck, the jury is entitled to believe that the doctor, who operates in those circumstances and with that honest belief, is acting to save the woman's life.

The Judge ruled that since the procedure was performed in good faith to save the mother's life, the defendant was entitled to an acquittal. (ii) the bona fide object of avoiding the practically certain physical or mental breakdown of the mother will afford an excuse, (iii) if a doctor in good faith thinks it necessary for the purpose of preserving the life of the mother', not only is he entitled to perform the operation, but it is his duty to do so; and (iv) the burden of proving that the procurement of abortion was not lawful was upon the Crown. The preservation of the life of the mother', is not confined to action taken to save her from danger but could arise where the whole physical or mental health of the mother were endangered as depicted in the present case. The Court further held that the phrase 'for the purpose of preserving the life of the mother' is wide and should be liberally interpreted to cover the acts that are dangerous to the health of the mother and will shorten the life as 'the life depends upon health and health may be so gravely impaired that it may result in death. If the doctor conducts the abortion procedure under such conditions, it is considered that he acted in good faith in order to save the mother's life.

Since the Crown in the impugned case failed to comply with the obligation of discharging the burden of proving that the operation was not procured in good faith for the purpose of preserving the life of the mother, the jury gave a verdict of acquittal . But if a doctors is found to have acted in bad faith, he would be liable to conviction for procuring illegal abortion[69].The question of good faith or bad faith is essentially a question of fact. In **R. v. Smith,[70]** the appellant, a medical practitioner was charged with unlawfully using an instrument to procure a miscarriage. The appellant on payment of a fee agreed to terminate pregnancy of a women of 19 years, who wanted an abortion without examining her internally or asking her medical history. The doctor also did not obtain the opinion of two doctors as required. When the woman was on the operation table, it was found that she was starting inevitable abortion, this operation became not a termination but a facilitating and tidying up of an inevitable abortion. It was contended that the appellant did not act in good faith when he operated and had formed no bona fide opinion as to the balance of risk between termination and continuance of pregnancy as

[69]Cogan and Leak [1975] 2 All E.R. 1059.
[70] [1974] I All E.R. 376.

required under the law. The Court of Appeal held that a verdict of bad faith where there is no evidence as to professional practice and medical probabilities is often likely to be regarded as unsafe. However, the nature of the evidence and other considerations must be considered. As an example, For instance :An opinion may be absurd professionally and yet formed in good faith; conversely an opinion may be one which a doctor could have entertained and yet in the particular circumstances of a case may be found either to have been formed in bad faith or not have been formed at all.[71]In course of time it was realized that the strict provision of the law of abortion contained in sections 58 and 59 of the Offences Against the Person Act 1861 was doing more harm than good. The medical profession's stance was negative, and catastrophic incidents continued to occur. Women who has been raped, deserted by their husbands, and overburdened mothers living in poverty with large families failed to get a medical abortion of course, the abortions could be bought but with a heavy price. As a result most of the women would go to 'back street abortionists' wielding a knitting needle, syringe, or stick leading to a great risk to their life. At times unwilling mothers used dangerous methods on themselves or committed suicide. It was also noticed that although illegal abortions were taking place in thousands, as in the case of India before the passing of the Medical Termination of Pregnancy Act of 1971, yet convictions were negligible. The police would not look upon abortion as real crime. As these injustices were more widely recognized, a strong belief developed that a woman had a right to manage her own fertility and that abortion should be legalized. At the same time, a substantial religious lobby based on the "sanctity of life" resisted any attempt to amend the legislation. As a compromise measure, the Abortion Act of 1967 was approved, which significantly liberalized abortion legislation while not conceding all pro-abortionist demands. Section 1 of the Act of 1967 makes it permissible for a certified medical practitioner to terminate a pregnancy in certain specific situations. (1) Medical Termination of Pregnancy Subject to the requirements of this section, when a pregnancy is terminated by a registered medical practitioner, a person is not guilty of an infraction under the legislation pertaining to abortion if two registered medical practitioners are of the view, formed in good faith.(a) that continuing the pregnancy would pose a greater risk to the pregnant woman's life or to the physical or mental health of the pregnant woman or any existing children in her family than terminating the pregnancy; or (b) that if the child were born, it would suffer from such physical or mental abnormalities as to be severely handicapped. Thus, a pregnancy may be legally aborted for health and eugenic reasons.

[71]R. v. Cooper [1969] I All E.R. 615.

The World Health Organization defines health generally as "the state of complete mental, physical, or social well-being, rather than merely the absence of disease or infirmity." The pregnant woman's actual or reasonably foreseeable surroundings may be considered in assessing whether the continuation of a pregnancy would pose such risk of impairment to health as is indicated in sub-section 1(a) of the Act of 1967.

A wider view of the health may be taken depending upon various factors such as, social psychological, economic, etc. to determine the desirability of the termination of pregnancy in a particular situation. It would, Inter alia, cover cases of overburdened mothers.

5.3 Abortion in Ireland

Abortion is illegal in Ireland.[72] The unlawful killing of an unborn child is a criminal offence under the provisions of section 58 and 59 of the Offences Against the Person Act 1861 carrying a maximum punishment to penal servitude for life. The protection given to the unborn child applies form the date of conception. In a recent case Attorney General of Ireland v. X. which evoked consideration debate in Ireland of the subject of abortion, in public and legal experts, a vexed question of law fact as regards the right to life of the unborn and right to the life of the mother was involved. The facts the cast are very pathetic. A fourteen year old school girl who discovered in January 1992 that she was pregnant as the result of an alleged rape by the father of her friend in the month of December 1991 was not permitted under the Irish law to get her pregnancy terminated. The girl and her parents accordingly decided to obtain an abortion in UK. But in the meantime the Attorney General obtained an interim injunction in the High Court restraining the girl and her parents from. (i) interfering with the right to life of the unborn; (ii) leaving the jurisdiction for nine months; and (iii) procuring or arranging an abortion within or outside the country. Rejecting the defense plea that psychological damage to the girl of carrying a child would be considerable and that the damage to her mental health would be devastating, if the termination of pregnancy is not allowed, the High Court granted permanent injunction. A reference was made to sub- section 3 to section 3 of Article 40 of the Constitution to vindicate the right to life unborn. The said sub-section says. The state recognizes the right to life of the unborn and, with regard to the equal right to life of the mother, guarantees in its laws to protect, defend, and vindicate that right as much as practical by its laws.

[72]Abortion Act 1967, s.7 (3).

While referring to the above constitutional provisions the court observed that the right to life of the unborn is guaranteed under the Constitution and that it was the duty of the various organs of the government including judiciary to defend and vindicate that right Judging the magnitude of the danger to the child and danger that exists to the life the mother, according to the court. The likelihood that the defendant will commit suicide if an order is issued (prohibiting abortion) is substantially lower a different order of magnitude than the certainty that the life of the unborn will be terminated if the order is not made. The young girl has the benefit of the love and care and support of devote parents who will help her through the difficult months ahead... Having had the regard to the rights of the mother in this case. The court's duty to protect the life the unborn requires it to make the order sought. However, the Supreme Court of Ireland by a majority of 4 to 1 allowed the appeal against the order of the High Court and discharged the injunction issued against the defendants. The court ruled that the Constitution requires that its provision be interpreted harmoniously and that the rights granted to the unborn and the mother be interpreted in concert. Since there was real and substantial risk the life of the mother by self-destruction as depicted by her suicidal tendency, which can only be avoided by termination of her pregnancy, the court observed that the defendant is permitted to obtain abortion in Ireland It may however he noted that the judgment of the Supreme Court setting out its reasons for lifting he injunctions granted by the High Court have not set the law of abortion in Ireland in a satisfactory state. the law is inmost unsatisfactory state of uncertainty as before. It is high time a suitable legislation be enacted in this important area of social concern effecting the right of the woman to privacy and freedom to decided to bear a child or not.

CHAPTER 6

LAW POLICIES AND PROGRAMMES FOR THE PROTECTION OF REPRODUCTIVE RIGHTS OF WOMEN IN INDIA

6.1 Introduction

"WE THE PEOPLE" have provided us with a Constitution that guarantees social, economic, and political justice. Regarding equality, Article 14 grants men and women equal political, economic, and social rights and opportunities. Article 15 prohibits discrimination based on religion, ethnicity, caste, sex, etc. against any citizen. Article 15[3] contains a provision allowing the state to engage in affirmative discrimination in support of women. Similarly, Article 16 ensures that all citizens have equal access to public appointment opportunities. Article 39(a) stipulates that the state shall direct its policy towards securing for all citizens, men and women, the right to a means of subsistence, whereas Article 39(c) guarantees equal pay for identical labor. Article 42 requires the state to provide for just and humane working conditions and maternity leave. Article 51A (e) of the Constitution specifically requires all citizens to abandon behaviors that undermine women's equality and worth. However, the issue is whether or not Indian women have been able to enjoy the constitutionally guaranteed benefits. In accordance with various provisions of the Constitution, the state has enacted a great deal of women-specific and women-related legislation to safeguard women from social discrimination, violence, and atrocities and to prevent social ills such as child marriage, dowry, and rape, among others. Despite the enactment of laws regarding dowry, rape, and violence against women, the actual situation is quite disturbing. What is true at the national level is also a global cause for concern.[73]

[73] A.S. 2004 (Universal Law Publishing Co., Delhi) Anand, Justice for Women: Concerns and Expressions 1b-1c.

The population policy of a developing nation like India must focus on (i) reducing the birth rate, (ii) limiting the number of children per family to two, (iii) reducing the mortality rate, (iv) educating the public about the consequences of a burgeoning population, (v) acquiring contraceptives, (vi) enacting laws such as legalizing abortion, and (vii) providing incentives. On the other hand, it must also strive to: (a) control the concentration of people in congested areas, (b) provide the public services necessary for effective settlement in new areas, and (c) relocate offices to less populated areas. Once the need for a population policy is recognized, it must be formulated by appointing various committees and commissions for research, advice, and expert consultation. It must then be implemented through various programmes and periodically evaluated. Population policy in India is a direct consequence of (a) the total population size, (b) a high growth rate, and (c) the problem of irregular population distribution between rural and urban areas. Since our policy must aim at "improving the quality of life" and "increasing individual happiness," it must serve as a means to achieving a broader objective of achieving individual fulfillment and social progress.[74]There is no specific law in India that addresses reproductive rights directly. In Indian statutes, the term 'reproductive rights' is not explicitly used or defined. In this chapter, an attempt is made to discuss the various provisions relating to reproductive rights incorporated in Indian laws, such as the provisions of the Constitution of India, the Indian Penal Code of 1860, the Medical Termination of Pregnancy Act of 1971 and the PNDT Act of 1994, and the Prohibition of Child Marriage Act of 2006. Attempts have also been made to examine the role of the judiciary in bestowing and upholding reproductive rights, as well as the conditions under which a pregnancy can be terminated and its maximum duration.

6.2 Reproductive Freedom under the Indian Constitution

The Constitution of India enshrines justice as the first promise of the Republic, which means that state power will execute the promise of justice in favor of millions who make up the Republic.[75] It is assumed that the philosophy of social justice is a myth without reproductive justice, as it encompasses some fundamental aspects of life. Respecting women's reproductive autonomy would have the greatest impact on their welfare. Such autonomy must incorporate and defend the personal intimacies of marriage, motherhood, procreation, and child rearing.[76]

[74] Ram Ahuja, Social Problems in India 96 (Rawat Publications, Jaipur, 2013).
[75] Krishna Iyer J., Social Justice-Sunset or Dawn 17 (Eastern Book Company, Lucknow, 1993).
[76] Gobind v. State of Madhya Pradesh and Anr, AIR 1975 SC 1378.

This autonomy is essential for the development of one's personality, and in such areas, an individual must be free to act as he pleases.[77] This autonomy is also broad enough to include a woman's decision whether or not to terminate a pregnancy.[78]The term 'Reproductive Justice' - at first glance - appears to be an alien concept for Indians. The concept by virtue of Article 253 of the Constitution of India, international human rights conventions are binding on India. Consequently, the Protection of Human Rights Act of 1993 recognizes that the aforementioned Conventions are now incorporated into Indian human rights law. According to Article 253 of the Constitution of India, our legislators may implement any international convention as law for the benefit of society. Being a signatory to various international instruments[79] of Human Rights, India has assumed the responsibility to provide and protect the rights of women; consequently, it grants women a plethora of rights. It also confers certain affirmative rights.[80] Article 14 of the Constitution of India guarantees women equality before the law and equal protection of the law.[81] Article 15 prohibits discrimination on the basis of sex, etc.[82] Article 15(3) empowers the state to make special provisions for women and children.[83]Right to life is guaranteed by Article 21[84] of the Constitution of India. Justice Bhagwati stated in the Francis Coralie Mullin case[85], "The fundamental right to life is the most precious human right and represents the pinnacle of all other rights." Although privacy is not expressly provided for in our Constitution, Article 21 implicitly incorporates the right to privacy as personal liberty. A citizen has the right to protect his or her own privacy, as well as that of his or her family, marriage, procreation, maternity, childbearing, and education[86]. Article 21 of the Indian Constitution guarantees personal liberty, which may include the freedom to conceive and give birth to a child. The right to make reproductive choices falls within the ambit of personal liberty as guaranteed by Article 21 of the Constitution. With the vast expansion of the concept of

[77] Varsha Jalan and Vivek Bajoria, "The Medical Termination of Pregnancy Act, 1971: A Doctrinal Anachronism Discounted by Society" 96 AIR 129 (2009).
[78] Roe et al. v. Wade, District Attorney of Dallas County (1973) 410 U.S.113.
[80]India has ratified United Nations Declaration on Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights etc.
[81] Vijaya Lakshmi, "Women's Rights are Human Rights" 96 AIR 23 (2009).
[82]Article 14 of the Constitution of India provides "The State shall not deny to any person equality before the law or equal protection of laws within the territory of India."
[83]Article 15 of the Constitution of India contains provisions for a particular application of the general principle of "equality of treatment" embodied in Article 14.
[84]Article 15(3) of the Constitution of India provides "Nothing in this article shall prevent the State from making any special provision for women and children."
[84] Article 21 of the Constitution of India provides that "No person shall be deprived of his Life or Personal Liberty except according to Procedure established by Law."
[85] AIR 1981 SC 746
[86] Shiv Shankar Singh, "Right to Privacy: A New Horizon in India" 118 Cri LJ 66 (2012).

Personal Liberty, the Right to Privacy has also been accepted to be compromised therein[87] and that such Right of Privacy would include the right to privacy of one's reproductive choices. As a result, it has been determined that the right includes the right to halt parenthood or motherhood in transit, i.e., the right to terminate pregnancy prematurely through abortion.

6.2.1 Right to Terminate Pregnancy

As previously discussed, reproductive choices can be made to procreate or not to procreate. The important point is that the woman's right to privacy, dignity and bodily integrity should be of paramount consideration. Reproductive rights include a women's entitlement to carry pregnancy, to give birth and to subsequently raise children.[88]But granting that the Right to Personal Liberty of a woman includes her right to terminate pregnancy depends on whether or not the exercise of such right would affect the Right of Life of unborn child. The answer of this question would obviously depend on the answer to the two questions, viz., (i) whether or not an unborn child is a person within the meaning of the Life as provided under Article 21[89], and (ii) if somehow we say that the unborn has life then when does the life comes into existence, because some believe that life begins immediately after conceiving and some believe life begins only after completion of first trimester.[90] Hence, a woman's right to terminate her pregnancy is absolute and may to some extent be limited by the state's legitimate interests in safeguarding the woman's protecting potential human life. However, regulations limiting woman's right may be justified only by a compelling state interest, and that legislative enactment must be narrowly drawn to express only the legitimate state interest at stake. Besides Fundamental Rights, Part IV of the Constitution enumerates certain Directive Principles to be followed by the state at the time of framing and implementing its policies. These Directive Principles reflect the ideals of a welfare state, which are intended for a system in which no one is dependent on the charity of others; in which it is not the responsibility of private individuals but the responsibility of the state[91] to provide the people with whatever is necessary for their welfare; and in which it is the responsibility of the state to secure for every citizen, as far as possible, full opportunity for the development of his talents, unhindered by poverty and ill

[87] Govind v. State AIR 1975 SC 1378.
[88]Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1.
[89] As per Section 20 of Hindu Succession Act, Section 99(i) of Indian Succession Act, Indian Penal Code (312-316) child in womb is considered as a legal person capable of enjoying legal rights.
[90] Sunil Deshta and Kiran Deshta, Fundamental Human Rights 95 (Deep and Deep Publication (P) Ltd., Delhi, 2004).
[91] Directive Principles of State Policy, (Article 36-51), The Constitution of India.

health. Article 38 plainly outlines the state's directive to promote the welfare of the people and maintain social order through the institution of the state, which must be based on the philosophy of justice in its social, economic, and political dimensions. However, the socioeconomic backwardness of various communities and the rise in the maternal mortality rate in India expanded the scope of social justice to include reproductive justice. Therefore, the Directive Principles of State Policy, when read in conjunction with the Fundamental Rights enumerated in the Constitution of India, reflect the constitutional mandate to provide women with meaningful freedom in reproductive matters.

6.3 Reproductive Freedom under the Indian Penal Code, 1860

The Indian Penal Code, 1860, in consideration of the religious, moral, social, and ethical background of the Indian community, defines various offences relating to miscarriage, injury to the unborn, and punishment thereof. These provisions are fundamentally based on the belief that human life is sacred and that legal protection extends to the unborn child in the mother's womb. It has made both "causing miscarriage with the consent" and "without the consent" of the woman punishable under Sections 312 and 313respectively.[92]

Section 312 Causing Miscarriage - Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or fine or with both.

Distinction between the concept of 'Woman with Child' and' Woman Quick with Child' According to Section 312, IPC voluntarily causing miscarriage is an offence in two circumstances, namely when a woman is 'with child' and the other being a woman 'quick with child'. According to judicial interpretation, a woman is regarded to be in the former circumstance as soon as gestation begins and in the latter circumstance when she feels the baby's movement. In other terms, quickening is the mother's perception that foetal movement has begun. Clearly, it alludes to a late stage of pregnancy. In the latter case, taking into account the nature and gravity of the offence, Section 36 prescribes a maximum of seven years of

[92] Akanksha Soni and Trishita Dasgupta, "Women and Reproductive Rights (Special Reference to Surrogacy and Right to Abortion)" in Paramjit S Jaswal and G.I.S Sandhu (eds.), Gender Issues in India: Sentisation, Reflection and Solutions (RGNU of Law, Punjab, 2012).

imprisonment of either type and a fine, whereas in the former case, the punishment may be up to three years of imprisonment, a fine, or both, depending on the nature of the offence.

The Explanation appended to Section 312 of the Code makes plain that the offender may be a woman or any other individual. The intention of a woman to have her pregnancy terminated is not a justification for abortion. In 1886, in the case of Ademma[93], a woman was charged under Section 312 of the Code for causing herself to miscarry, despite the fact that she had been expectant for only one month and that there was no 'foetus' or 'child' to speak of. As the prisoner had only been expectant for one month, the inferior court acquitted her on the grounds that she was not 'with child' as defined by Section 312 of the Code. However, the High Court ruled that the acquittal was illegal, emphasizing that it was an expectant mother's duty to protect her embryo from the moment of conception.

Abortion permitted on Therapeutic Grounds Section 312 of the Criminal Code allows abortion only on therapeutic (medical) grounds, i.e., to save the mother's life. Thus, the expectant child must not be terminated unless it is necessary to preserve the even more precious life of the mother. The provision implicitly recognizes the right to life of the fetus. To claim exemption from criminal liability on therapeutic grounds, however, the threat to life need not be imminent or certain. The person is entitled to legal protection if the act is performed in good faith. The term "good faith" is not defined in the MTP Act. The General Clause Act of 1897 defines good faith as an act that is presumed to have been performed in good faith when it has been performed honestly. According to Section 52 IPC, nothing is considered to be done or believed in good faith if it is done or believed carelessly. However, good faith is sufficiently deceptive and equivocal to safeguard the vast majority of therapeutic abortions so long as they are performed ostensibly to save the mother's life. In reality, what constitutes good faith is not a legal question, but a question of fact to be decided in each case based on its particular facts and circumstances.[94]

[93] Queen Empress v. Ademma (1886) I.L.R. 9 Mad. 369.
[94] See Rex v. Bourne, (1938) 3 All. ER 615-21. Held, that all therapeutic abortions are lawful. See D.S. David, “The Law of Abortion and Necessity” 2 Mad LR 126 (1938).

Section 313- Causing Miscarriage without Woman's Consent- Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.[95]Section 313, I.P.C. penalizes voluntarily causing miscarriage of a woman with child without her consent, while miscarriage with consent is dealt with under section 312, I.P.C. Under Section 313, only the person procuring the abortion alone is liable to punishment, whereas under Section 312, I.P.C. the woman is also liable for punishment.[96]In **Moideenkutty Haji v. Kunhikaya**,[97] the Kerala High Court held that an offence under Section 313, I.P.C. could not be made out, where the only allegation in the complaint was that on hearing that the woman was pregnant, the accused took her to a doctor, who terminated her pregnancy and there was no case that it was without her consent. In contrast, the allegation demonstrated that the woman voluntarily consented to an abortion and continued to have sexual relations with the defendant afterward; there was no evidence that the abortion was at the accused's behest. In addition, it was unclear from the allegation whether he accompanied the woman solely at her request and whether he even asked the doctor to perform the abortion.

The absence of an accusation against the doctor who performed the abortion indicated that she had no complaint against him.

Section 314-Death caused by act done with intent to cause Miscarriage - Whoever, with the intent to cause the miscarriage of a pregnant woman, commits any act that results in her death shall be punished with imprisonment of either kind for a term that may not exceed ten years and shall also be subject to a fine.

If act done without woman's consent - and if the act is done without the woman's consent, the offender is subject to life imprisonment or the punishments listed above.

Section 315- Act done with intent to prevent child from being born alive or cause it to die after birth - Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and by such act

[95] Section 313, Indian Penal Code, 1860.
[96] Queen Empress v. Aruna Begam, (1873) 19 WR (Cr) 230.
[97] AIR 1987 Ker 184: 1987 Cr. LJ 1106 (1109).

prevents that child from being born alive or causes it to die after its birth, shall, if such act is not done in good faith to save the life of the mother, be punished with death. The only distinction between this type of foeticide and infanticide, which is homicide, is that the former is performed prior to the child's birth, while the latter can only be committed after birth.

Section 316-Causing Death of Quick Unborn Child by act amounting to Culpable Homicide - Whoever does any act under such circumstances that if he thereby causes death he would be guilty of culpable homicide, and by such act causes the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The woman is injured but does not perish; however, the unborn fast child she is carrying dies as a result. A is culpable of the crime specified in this section.[98]

6.4 Medical Termination of Pregnancy Act, 1971

The Indian Parliament passed the Medical Termination of Pregnancy Act, 1971 in August 1971, and it went into effect on April 1, 1972. The MTP Act is modeled after the UK's Abortion Act of 1967. Therefore, the name was altered to 'Medical Termination of Pregnancy Act'. Originally, the name proposed for the legislation was 'Abortion Act,' but social organizations and the government did not approve. According to the MTP Act, abortion is permissible if it is performed for one of several specified reasons within a limited time after conception by a specially designated specialist and under specified conditions. In addition to Section 312 of the Indian Penal Code, 1860, the MTP Act provides additional grounds for terminating a pregnancy. The legalization of abortion faced many obstacles from anti-abortionists and pro-life advocates, as well as the vital role played by women's groups.When the MTP Act was passed in India, only a handful of countries had legalized abortion, including the Soviet Union, Sweden, Poland, Ireland, and the United Kingdom. It acknowledged that an unwanted pregnancy could cause a woman severe mental anguish; therefore, she should have the right to abort it.[99] The legislative intent was to provide a qualified 'right to abortion' and the termination of a pregnancy, which had never been recognized as a normal recourse for expecting

[98] Section 316, Indian Penal Code, 1860.
[99] M.E. Khan, Sandhya Barge, et.al., "Availability and Access to Abortion Services in India: Myth and Realities" available at: www.iussp.org/Brazil2001/s20/S21_PIO_Barge (visited on May25,2023).

mothers.[100] Women were given complete freedom and discretion under the law to decide whether or not to conceive. However, once this option to conceive was exercised, the termination of a foetus was a crime under the Indian Penal Code. The Medical Termination of Pregnancy Act, 1971 intervenes at this stage and gives the woman a large degree of autonomy, subject to certain conditions such as the circumstances under which the pregnancy may be terminated, the length and duration of the pregnancy, the proper authorities who can perform the operation, etc.[101]The Preamble to MTPA states "an Act to provide for the termination of certain pregnancies by registered medical practitioners and foetuses." Moreover, only a registered medical practitioner, who is defined in Section 2(d) of the Act as "a medical practitioner who possesses any recognized medical qualification as defined in Clause (h) of Section 2 of the Indian Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act," is permitted to perform a termination of pregnancy[102]. Its purpose, in addition to reducing the high incidence of unsafe abortions, is to Consequently, the Act has the potential to accommodate developments like in vitro fertilization. The Act also encourages a reduction in the rate of population development by allowing the termination of an undesirable pregnancy on the grounds of contraceptive device failure.

6.4.1 Reasons for Abortion

Section 3 of the MTP Act, which is the operative section, has modified the rigorous provision of the law of abortion contained in Section 312 of IPC by allowing abortion in a variety of circumstances. In subsection (2), the section provides, among other things, that the termination of pregnancy by a registered medical practitioner is not an offence if the pregnancy involves:

i) a risk to the life of the pregnant woman; or ii) a risk of grave injury to her physical or mental health; or iii) if the pregnancy is caused by rape; or iv) there is a substantial risk that, if the child were born, it would be severely handicapped; or v) failure of any device or method used by the married couple for the purpose of limiting the number of children; or vi) risk to the health of the pregnant woman by exposure to toxic substances; or Subsection (2) of Section 3

[100]Kamaljeet Singh and Bhumika Sharma, "Issue of Legalization of Abortion: With Reference to Changed Social Conditions" 116 Cri LJ 202 (2010)
[101] Malik and Raval, Law and Social Transformation 125 (Allahabad Law Agency, Faridabad, 2007).
[102] Kriti Dwivedi, "Medical Termination of Pregnancy Act, 1971: An Overview" available at: www.legalservicesindia.com/articles/pregact.htm (visited on May 26,2023).

of the Act, which is the relevant provision on the subject, provides:[A] pregnancy may be terminated by a registered medical practitioner:(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of the opinion formed in good faith that-(i) the continuance of the pregnancy is likely to result in the Gaps and Loopholes. It is essential to note that the Act contains a number of vulnerabilities. First, the Act does not define what constitutes a risk or grievous injury to a woman's mental health. The terms 'grave injury' and 'substantial risk' are undefined. The decision regarding the severity of the injury or the level of risk has been delegated to the physician. However, the MTP Act provides some guidance for doctors in the form of two explanations. Section 3(2) Explanation 1: Where a pregnant woman alleges that her pregnancy was caused by rape, the anguish caused by her pregnancy shall be presumed to constitute a grave injury to her mental health. Consequently, rape itself is not an indication. Psychological anguish following pregnancy as a result of rape is the primary indicator. In other words, mental anguish must be considered; proving rape and influencing her character are unnecessary. Her claim that she has been assaulted is sufficient evidence. Further proof of rape such as medical examination, trial, andjudgment is not required. However, can an unmarried woman utilize this clause for an abortion? She cannot use this, but can obtain an abortion under the general clause of mental indication.Sub Section (3) clarifies that, in determining whether the continuation of a pregnancy would involve the risk of injury to the woman's health described in Subsection (2), the pregnant woman's actual or reasonably foreseeable environment may be considered. The interpretation of the terms reasonably or foreseably is left to the medical practitioners. The interpretation of environmental clauses could include a drunken spouse, a low-income group, a sizable family, etc.

Section 3(4) of the MTP Act clarifies whose consent is required for termination of pregnancy:(a) No pregnancy of a woman who has not attained the age of 18 years, or who having attained the age of 18 years, is a lunatic, shall be terminated except with the consent in writing of the guardian.(b) Except as otherwise provided in Clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.[103]It should be noted that where a woman Section 2(b) defines 'mentally ill person' as an individual who is in need of treatment due to any mental disorder other than mental retardation.[104]

[103] Section 3(4), Medical Termination of Pregnancy Act, 1971.
[104] Section 2(b), Medical Termination of Pregnancy Act, 1971.

Importantly, if the woman is an adult, she does not need anyone's permission to terminate her pregnancy. The consent of the spouse is irrelevant. Therefore, if the woman desires an abortion but her spouse is opposed, the procedure can still be performed. However, it cannot be performed if the woman does not want an abortion but her spouse does. The primary issue, however, is that it is not prudent not to include the spouse in the decision-making process regarding the use of contraception or abortion (if necessary) because, in the majority of cases, it is the male who bears the financial burden of the child and, ultimately, the family. The issue must be viewed from the perspectives of both parties, namely the woman's right to control her body and make her own decisions, and the man's desire to have children. Therefore, when we discuss reproductive freedom, it should include both men and women, as freedom of choice is the highest priority for every human being.[105]If the pregnant woman is unmarried and over the age of 18, she must provide her own consent. In this instance, guardian consent is unnecessary. The issue arises, however, if she is a minor or insane. A minor girl cannot independently seek an abortion under the MTP Act. The written consent of a parent or guardian is required. For example, in the case of Shruti Sachdeva, a 15-year-old girl was abducted from her home and later located in Goa. She was carrying Nishan Singh's child. The girl's father demanded that the pregnancy of his minor daughter be terminated on the grounds that it was unintended. The father argued that since his daughter was a rape victim, the pregnancy would be detrimental to her mental health.[106]Since she is a rape victim and a minor, the pregnancy can be terminated with the written consent of her guardians.[107]In another case, a 16-year-old girl eloped and got married, prompting her father to file a police report. The police located the couple, and a magistrate released the boy on parole while the girl was taken to the boy's residence. In V. Krishnan v. G., the Madras High Court granted the father's habeas corpus petition in V. Krishnan v. G. Rajan alias Madiput Rajan and The Inspector of Police (Law and Order)[108] ordered the girl to be placed in a Home. After a month, the girl was discovered to be expectant, and her father filed a second habeas corpus petition with the Madras High Court, requesting that his daughter's pregnancy be terminated medically. The Division Bench of the Madras High Court refused to order the termination of the pregnancy after hearing the girl's insistence on carrying the pregnancy to term.

[105] Subhash Chandra, "Right to Abortion: A New Agenda" AIR Jour 130 (1997).
[106] "CJM Defers Decision on Shruti's Custody" The Tribune, November 17, 2012 at 5.
[107] "Shruti Case: Court allows DNA test on accused Nishan Singh" The Tribune, November 9, 2012 at 4
[108] H.C.M.P. No. 264 of 1993/H.C.P. No. 1450 of 1993 decided on 2 December, 1993.

According to the Indian Penal Code, having sexual relations with a juvenile woman aged 15 or older is not illegal. In addition, neither the Hindu Marriage Act of 1955 nor the Child Marriage Restraint Act of 1929 invalidate the marriage of a minor female. Therefore, these laws indirectly acknowledged the right of a minor female to marry and, by extension, to become pregnant. The parents of a minor girl cannot force her to terminate her pregnancy or deny her the natural right to conceive, and no law gives anyone the authority to subject a minor girl to any unwelcome treatment. By the 2002 Amendment Act, this provision has been repealed and replaced with a new Section 4 that reads as follows: " No termination of pregnancy shall be performed in accordance with this Act at any location other than-(a) a hospital established or maintained by the government, or(b) a place for the time being approved for the purpose of this Act by the government or a District Level Committee constituted by the government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee: Provided that the District Level Committee shall consist of not less than three ad hoc members and not more than five ad Non-governmental institutions may also perform abortions if they obtain a license from the District's Chief Medical Officer. The requirement that an anaesthetist be available on call has also been eliminated by the amended rules.

6.4.2 Exceptions to Sections 3 and 4 of the Act

As mentioned previously, Section 3 states that a termination of pregnancy may be performed up to 20 weeks of gestation and if the termination is medically necessary at the discretion of the registered medical practitioner(s). It also stipulates that the pregnancy of a minor or a mentally ill person cannot be terminated without the guardian's permission. Section 4 specifies the location where a termination of pregnancy could take place. Section 5 outlines the circumstances in which Sections 3 and 4 do not apply. This Section after the amendment [109]runs as under:(1) The provisions of Section 4, and so much of the provisions of Sub- Section (2) of Section 3 as relate to the length of the pregnancy and the option of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but

[109] MTP Amendment Act, 2002.

which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.(3) Whoever terminates any pregnancy in a place other than that mentioned in Section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.(4) Any person being the owner of a place which is not approved under clause (b) of Section 4 shall be punishable with R.I. for a term which shall not be less than two years but which may extend to seven years.

6.4.3 Legal Protection for Doctors

Section 8 of the Act provides legal protection to doctors for any damage caused or likely to be caused by anything done or intended to be done in good faith for the purpose of termination of pregnancy[110]. Although MTP has legal protection, the doctor must maintain confidentiality because it is a woman's private matter. The identity of the woman subjected to MTP should remain confidential. It should not be discussed with other physicians or acquaintances, as doing so would constitute a violation of the confidentiality rule. In other words, a doctor is exempt from criminal liability for causing a miscarriage if he acted in good faith to procure an abortion. However, if his negligence is proven, he will be charged with criminal negligence.[111]

Confidentiality in MTP Under no circumstances may information be divulged, with the following exceptions:

1. Inquiries to the Secretary of Health.
2. Magistrate of First Class in Criminal Court Proceedings.
3. District Judge in Civil Cases; and
4. In the case of genuine scientific investigation, the Secretary to the Government of India is exempt from any legal action or suit for any harm caused or likely to be caused.
5. However, minor violations that do not precisely come under the IPC, 1860 Sections 312-315 may fall under Section 166 of the Office Secrets Act, 1923.

[110] See Section 8, M.T.P.A. 1971.
[111] Jugan Khan v. State of M.P., AIR 1965 SC 831.

6.5 Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

India is one of the nations where female foeticide and infanticide are on the rise. Female infanticide is the barbarous practice of killing newborn female babies with prenatal knowledge. Female infanticide has evolved into female foeticide, which is the prenatal elimination of female embryos/foetuses, as a result of advances in medical technology. Sex-selection has resulted in a steady and alarming decline in India's Sex Ratio123 and Child Sex Ratio. The national Sex Ratio of 933 women to 1000 men in 2001 decreases to as low as 874: 1000 in Punjab and 861: 1000 in Haryana, while the national Child Sex Ratio in 2011 was 914. In India, an estimated 15 million females have not been produced in recent decades. A declining Sex Ratio leads to an increase in sexual and gender-based violence against women, disturbs the delicate equilibrium of nature, and threatens our very existence.

The eleventh five-year plan emphasized gender equality by halting the decline in the infant sex ratio and implementing 'BalikaSamriddhi Yojana' for female children. States have already instituted several girl-saving programmes like Apna Beti Apna Dhan (Haryana), Kanyadhan (Uttar Pradesh), MahilaSamakya Yojana (Andhra Pradesh) and others. All of these, however, have failed to accomplish the goal. National Action plan for the girl child was formulated in 1992 for the "Survival, Protection, and Development of the Girl Children." In 1997, the "Balika Samriddhi Yojana" was a major initiative for the protection of girl children where financial support is given as a post-delivery grant to the mother of a girl child as well as other financial benefits for education and development. Government's 'Save the Girl Child' campaign, featuring brand ambassadors such as tennis icon Sania Mirza and squash champion Joshna Chinnappa, has once again failed to raise public awareness. The South Asian Association for Regional Cooperation (SAARC) designated 1991-2000 as the "Decade of the Girl Child" in an effort to prevent female infanticide and foeticide in its member states. In spite of these efforts, the States have been unable to raise public awareness to prevent female foeticide[112]. In the past, when scientific techniques were not as advanced, it was impossible to determine the gender of a foetus in the womb until it was born. However, midwives and practitioners of traditional medicine have attempted to determine the sex of an unborn child using a variety of unscientific methods based on interpretations of the expectant mother's appetite, preferences,

[112] Partha Pratim Mitra, "Child Sex Ratio, 2011: The Myths of Laws and the Reality of Policies" 117 Cri LJ 254-255.

hallucinations, and gait. With a series of related scientific and medical advancements, it is now possible to accurately determine the sex of the unborn in a way that is simple, safe, and painless. Commonly used medical techniques for sex-selection include: i. chorionic villus sampling. Pre-conception techniques such as PGD and ii. PGD is an expensive technology utilized primarily by infertile couples undergoing IVF. Amniocentesis and ultrasound scanning have been the most widely used methods of sex selection in India over the past five decades. Amniocentesis was first introduced in India in 1975 at the AIIMS for detecting genetic abnormalities in foetuses, and by the mid-1980s, it was being abused for sex determination. Ultrasonography is the most prevalent technique for determining a person's gender. Used normally to determine foetal position or abnormalities, it can determine foetal sex after the fourth month of gestation and has opened the floodgates for female foeticide.

6.5.1 Factors Responsible for Female Foeticide[113]

In India, a nation dominated by men, the birth of a son is given greater importance than that of a daughter. Moreover, with the rise in crime against women, parents do not want to have a daughter.

a. Patriarchal Society

Indian society is patriarchal in that it is believed that a son will carry on the family name. Indian proverbs such as "raising a girl is like watering a neighbor's plant" illustrate the notion that parenting a daughter is a squandering of resources. As the daughter must remain in her husband's family after marriage, only the son remains to care for the parents. Therefore, it is believed that only the son provides support in old age. It is also believed that only through the son can one attain Moksha, as only the son performs the funerary ceremonies of the parents.

b. Cultural Causes

India has an age-old fascination with the male offspring. In India, women are socially pressured to have sons, and as a result, they are frequently viewed as failures and tend to feel regretful after having a daughter. Giving birth to a daughter can result in rejection by the in-laws and the community as a whole, as well as physical abuse by their husbands or in-laws. Therefore, the mother is under immense pressure to abort the female foetus in order to secure her position in the in-laws' home.

[113] Supinder Kaur, "Female Feoticide: Killing the Daughters- A Critical Evaluation" II Journal of University Institute of Legal Studies" 216-217 (2008).

c. Economic Causes

Economic causes are also a factor in this practice. In India, there is no equality; some people are excessively affluent, while others live below the poverty line and cannot afford two square meals for themselves and their families. This ultimately places pressure on them to restrict their families to sons only. In addition, a son is viewed as a source of income, whereas a daughter is viewed as a financial burden, as it is not considered prudent to send daughters to work in the fields. In addition, the prevalent dowry system in India contributes to this issue. As part of the marriage contract, the parents of the betrothed must offer money and presents to the family of the suitor. In an effort to circumvent these costs, parents avoid having daughters.

The society is rife with crimes against women, such as rape, dowry, abduction, hijacking, prostitution, domestic violence, and sexual harassment, and parents fear for their daughters' future. To alleviate all their stress, they avoid having a daughter. After the recent Damini rape/murder case[114], no parent desires a daughter, and no girl desires to be born as a female.

In many rural regions of India, there is a strict social prohibition against a daughter inheriting land, because if she does, the land is lost to her father's lineage. The recent Hindu Succession (Amendment) Act of 2005 eliminates the gender discriminatory clause in agricultural land, but only applies to Hindu women; non-Hindu women continue to face the same obstacle.

6.5.2 Objective

The Act regulates the use of prenatal diagnostic techniques in an effort to prevent illicit and antisocial prenatal sex determination practices. The PNDT Act has been renamed "Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 2003" (PC &PNDT Act) to prevent the misuse of technology for pre-conception sex selection. It prohibits sex selection before or after conception, regulates pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities, certain congenital malformations, or sex-linked disorders, and prevents their misuse for sex determination leading to female foeticide, as well as other matters related to or incidental to these provisions.

[114]Where six persons allegedly gang raped 23 year-old Para-Medical student in the moving bus and brutally raped and killed her.

This law prohibits pre-conception and pre-natal determination of sex advertisements and establishes penalties for their violation. Whoever violates the provisions of this Act is subject to imprisonment and a fine. Central Supervisory Board was established to oversee the activities and functions authorized by this Act. State Supervisory Boards and Union Territory Supervisory Boards were also established by the 2002 Amendment Act to assist the Central Supervisory Board. Act. stipulates that all genetic counseling centers, genetic laboratories, and genetic clinics must be registered in accordance with its provisions.

6.5.3 Regulation of Genetic Laboratories and Genetic Clinic

No PNDT activities may be conducted in a genetic counseling centre, genetic laboratory, or genetic clinic unless the facility has been registered under the Act. They cannot employ or accept the services of anyone who lacks the required qualifications, whether on an honorary or paid basis. No medical geneticist, gynaecologists 'pediatricians, registered medical practitioner, or other person shall conduct such tests at an unregistered facility[115]. Section 3A prohibits sex selection and provides that no person shall conduct sex selection on a woman or on a man or on both, or on any tissue, embryo, conceptus, fluid, or gametes derived from either or both of them.[116]Section 3B prohibits sex selection and provides which prohibits the sale of ultrasound machines to unregistered persons, clinics, laboratories, etc., states that no one may sell an ultrasound machine, imaging machine, scanner, or any other machine capable of sex detection of a foetus to a genetic clinic or any other unregistered person under the Act.[117]

6.5.4 Regulation of PNDT

Section 4 lays down an important provision that no PNDT shall be conducted except for abnormalities; namely, chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathics, sex-linked genetic diseases, congenital anomalies, and any other abnormalities or diseases specified by the control supervisory board[118]. The pre-natal diagnostic techniques may be performed if any of the following conditions are met:[119](i) Age

[115] Section 3, PNDT Act.
[116] Section 3A, PC & PNDT Act, 2003.
[117] Section 3B, PC& PNDT Act, 2003.
[118] Section 4, PNDT Act, 1971.
[119] S.N Sharma, "Pre Conception and Prenatal Diagnostic Act, 1994: A Study of its Provisions and Working" Cri LJ 254 (2007)

of the pregnant woman must be iii) The pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection, or chemicals.(iv) The pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease.(v) Any other condition that may be specified. Section 5 requires that side and after effects of such diagnostic procedure must be explained to the pregnant woman and her written consent to undergo suction ultrasonography must be obtained. No one may communicate the sex of the foetus to an expectant woman, her relative, or any other person through words, signs, or any other means. Section 6 of the Act prohibits the use of prenatal diagnostic procedures, including ultrasonography, to determine the foetal gender.

6.5.5 Offences and Penalties

Section 22, which relates to the prohibition of advertising relating to pre-conception and pre-natal determination of sex, states that no person or organization, genetic counseling centre, or centre with an ultrasound machine or other technology capable of determining the sex of a foetus or sex issues shall issue, publish, or cause to be issued or published any advertisement regarding the availability of pre-natal determination of sex. Further, no person or organization, including genetic counseling centers or genetic clinics, shall issue, publish, distribute, or advertise in any way pre-natal determination of sex by scientific or non-scientific means. Section 23 provides that any medical geneticist, gynaecologist, registered medical practitioner, who owns a genetic counseling centre or clinic or is employed at any such place and renders professional or technical service to or at such a centre and who contravenes any of the provisions of the Act or rules made there under shall be punished with imprisonment for a term not exceeding three years and a fine not exceeding Rs. 10,000/-. Second, the name of the medical practitioner shall be reported by the appropriate authority to the State Medical Council for necessary action, including suspension of registration, if the charges are framed by the Court, until the Court disposes of the case; if he is convicted, his name shall be removed from the register for five years and permanently for the subsequent offence. Section 23(3) stipulates that any person who seeks the assistance of a genetic counseling centre or a registered medical practitioner shall be reported to the State Medical Council for appropriate However, the provision shall not apply to a woman who was compelled to undergo such diagnostic procedures or selection. According to Section 24, unless the contrary is proven, the court shall presume that the pregnant woman was compelled to undergo such a test by her husband or another relative, and that person shall be liable for aiding and abetting the crime. According to

Section 25, whoever violates any provision of the Act or rules made there under for which no penalty has been prescribed under the Act shall be punished with imprisonment for a period not to exceed three months or a fine not to exceed Rs.1,000, or both, and for continuing contravention, an additional fine not to exceed Rs. When a violation of the Act is committed by a corporation, every person in command and responsible for the corporation at the time of the violation shall be deemed culpable of the violation and subject to punishment. Section 27 stipulates that all violations of the statute are cognizable, non-bailable, and non-compoundable. No court other than a Metropolitan Magistrate or Judicial Magistrate Class I shall adjudicate any offence punishable under the Act, as per Section 28. Thus, the Act contains numerous provisions to prevent the misuse of these techniques. In a landmark case, Centre for Enquiry into Health and **Allied Themes (CEHAT) v. Union of India**[120], the Supreme Court of India issued a directive to the Central Government to prevent the misuse of these techniques. To educate the public about sex detection and female foeticide, and to implement the provisions and regulations of the PNDT Act of 1994 with vigor. In addition, the court ordered the Central Supervisory Board (CSB) to convene every six months. In addition to directing States and Union territories to submit quarterly reports, the Central Supervisory Board will review, monitor, and investigate the implementation of the law. In **Chetna, Legal Advisory WCD Society v. Union of India**[121], the court stated that, if necessary, the National Human Rights Commission may also be contacted in this matter in order to seek the Commission's assistance in the proper implementation of the National Programme for Eradication of Female Foeticide and Infanticide and its improvement where necessary. In another **Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India**[122] case, the Supreme Court of India directed State Governments to conduct additional surveys to ensure that unregistered clinics do not operate in any part of the country. The Act was largely non-implemented, according to a petition filed by CEHAT[123] and other organizations, and the Central Government did not take any steps to ensure its proper implementation after its enactment.

[120] (2001) 5 SCC 577.
[121] (1998) 2 SCC 158.
[122] AIR 2002 SC 3689.
[123] Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India, AIR 2003 SC 3309.

6.6 ROLE OF THE JUDICIARY IN THE PROTECTION OF WOMEN REPRODUCTIVE RIGHTS

6.6.1 Approach of the Legal System to Reproductive Freedom

The current legal framework appears insufficient due to the lack of education in abortion-related matters, which is the result of a long-standing prohibition and totalitarian pronationalism. It appears that the future conflict for this privilege will be fought in the courts, not in Congress or state legislatures. Unfortunately, the judiciary appears to adhere to the distinction between public and private domains. Whereas in matters of employment, courts have generally been vigilant in protecting women's equality[124], in the private domain they have been less forthcoming[125]. The contribution of the Indian judiciary in administering reproductive justice can be illustrated by a number of cases in which the court expanded the scope of the right to life and personal liberty guaranteed by Article 21 of the Indian Constitution. Incorporating numerous rights within the scope of Article 21 and instilling the philosophy of reproductive justice in India, the Indian court pushed the wheel of justice to its greatest extent. According to Article 21 of the Constitution, a woman's right to make reproductive decisions is also a component of her personal liberty.

In **B.K. Parthasarthi v. Government of Andhra Pradesh**,[126] the court took a step further and determined that the right to procreate or reproductive autonomy is a component of the right to privacy. The Andhra Pradesh High Court upheld "the right to reproductive autonomy" of an individual as a component of his "right to privacy" and agreed with the decision of the United States Supreme Court in **Jack T. Skinner v. State of Oklahoma[127]**, which described the right to reproduce as "one of the basic civil rights of man "In **Javed v. State of Haryana[128]**, a full bench of the Apex Court had the opportunity to comment directly on the women's reproductive freedom. In this instance, the constitutionality of Sections 175(1)(q) and 177(1) of the Haryana

[124]Indira Swahney v. Union of India, 1992 SCC (L&S) Supp. 1; Bombay Labour Union v. InternationalFranchise, AIR 1966 SC 942.
[125]State v. Narusu Appa Mali, AIR 1952 Bom 84; Krishna Singh v. Mathura Ahir, AIR 1980 SC 707
[126]AIR 2000 AP 156
[127] 316 US 535.
[128]AIR 2003 SC 3057

Panchayati Raj Act of 1994 was challenged on the basis of arbitrariness and discrimination, among other grounds. As these sections disqualify a person with more than two children from holding or contesting election to specified Panchayat offices one year after the date of the Act's enactment. Referring to the Statement of Objects and Reasons of the Act, the Supreme Court determined that the purpose of the statute is to promote family welfare in accordance with the National Population Policy and proclaimed the statute to be consistent with said policy. The court was so concerned with the need to curb population development that, in the name of the national interest, it strongly supported the notion of imposing disincentives through legislation. It ignored the New Population Policy's paradigm transition from the use of coercive techniques to the use of motivational tools. In a similar vein, the court summarily rejected the argument that the challenged provisions severely harmed women because they lacked autonomy in reproductive matters and were forced to bore children without choice. Rather, the court noted that if a man forces his wife to produce a third child, he would not only disqualify his wife but also himself. The court then abruptly added: We do not believe that Indian women are so vulnerable that they are compelled to bear a third child against their will, given their growing awareness. In conclusion, suffice it to say that if the legislature wishes to carve out an exception for women, it is free to do so, but the fact that women are not expected to be affected by the disqualification does not render it unconstitutional. Similarly, in **Zile Singh v. State of Haryana**[129], the Supreme Court reaffirmed its position in the Javed case. In yet another landmark decision, **Air India v. Nargesh Meera**[130], the Supreme Court struck down the Supreme Court ruled that the condition of the first pregnancy was unreasonable and capricious because it tantamount to compelling the air hostesses not to have children, which was an affront to Indian womanhood. The court observed that a woman does not become physically or constitutionally frail after having children. There is no legal or medical support for this unsupported claim. After employing the air hostess for four years, terminating her employment if she becomes pregnant would be tantamount to compelling the impoverished air hostess not to have children, thus interfering with the natural course of human nature. It is not only a vicious and heartless act, but also an open affront to Indian womanhood, the most revered and sacred institution. This course of action is repugnant to the ideals of a civilized society and is utterly abhorrent. In addition to being egregiously unethical, it reeks of a deep-seated narcissism at the expense of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary, but also contains the character of injustice and exhibits

[129] (2004) 8 SCC 1.
[130] AIR 1981 SC 1829.

blatant despotism, and is therefore plainly in violation of Article 14 of the Constitution.[131]In **V. Krishnan v. G.**, the court ruled that such a provision violated Article 14 of the Constitution. In Rajan[132], the Madras High Court considered the question of whether the guardian of a minor girl is permitted to obtain a court order for the issuance of directions to terminate the pregnancy of a minor girl when the minor girl objects to such termination. The court denied permission to terminate the pregnancy. In **Suchita Srivastva and Others v. Chandigarh Administration[133]**, the Supreme Court acknowledged the reproductive rights of women with mental retardation. The Supreme Court heard an appeal of the Punjab and Haryana High Court's decision to enable the Chandigarh Administration to terminate the pregnancy of a mentally-challenged 19-year-old woman who was assaulted by a security officer at a nariniketan in Chandigarh. The victim had passed the 19th week of pregnancy, but a medical examination revealed no physical abnormalities in the foetus, and she was medically competent to give birth. The Supreme Court ruled that the MTP Act plainly respected the personal autonomy of adults with mental retardation who had reached the age of majority. Given that none of the other statutory conditions had been met in this instance, it was abundantly evident that a relaxation of the consent requirement for proceeding with an abortion could not be permitted. The court determined that it was aware that she would be unable to raise the infant. However, this could not have been the reason for the abortion. In the meantime, three organizations have offered to assist the rape victim and her infant. They include the Union Government-run National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities, the Disabled Rights Group and Parivar, and the national federation of parents associations for persons with these four disabilities[134]. The Chief Justice noted that the woman desired to have a child and was physically fit to give birth. We have adopted this position because the applicable statute clearly contemplates that even a woman who is determined to be 'mentally retarded' should give her consent for the termination of a pregnancy." According to the researcher, there are numerous cases in which the court ruled that the woman has an absolute right to abortion and no one can deny her this right. Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, has been interpreted by the judiciary to include the right to abortion. **Rajeshwari v. State of Tamil Nadu[135]**, where the court granted permission to terminate the pregnancy of an unmarried 18-year-old girl who was

[131] Air India v. NargeshMeerza, AIR 1981 SC 1829: (1981) 1 SCC 438: (1981) 4 SCC 325.
[132]1994 (1) LW (Cri.) 16 (Madras).
[133]2009(11) SCALE 813.
[134] "SC No to Abortion for Nari Niketan Victim" The Tribune, 22 July, 2009 at 1.
[135]1996 Cri LJ 3795.

praying for issue that bearing the unwanted pregnancy of a three-month-old child caused her to become mentally ill and the continuation of pregnancy has caused her great mental anguish, resulting in a grave injury to her mental health because the pregnancy was the result of rape. The court, after reviewing the pertinent provisions of the Medical Termination of Pregnancy Act, 1971 and taking into account the facts of the case, was compelled to conclude that unless the petitioner's pregnancy was terminated, she would suffer mental anguish and shock. State of MP, the accused had raped and impregnated a girl of approximately 12 years of age. According to the allegations, two other co-defendants abducted the victim and terminated her pregnancy. Therefore, the initial accusation against them is causing a miscarriage without the girl's consent. The court found all three defendants guilty of pregnancy termination without the assent of the mother or the daughter.

In **Kamalavalli v. C.R. Nair**[136], the High Court of Madras permitted the 28-year-old rape victim to have an abortion, subject to the doctor's consent. Expressing concern about the misuse of modern science and technology in preventing the birth of a girl child, the Supreme Court of India in 2003 in **Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India**[137] directed the concerned authorities to strictly monitor the activities of the ultrasound diagnostic clinics to ensure that they are not This was demonstrated by a recent case[138] decided on August 7, 2007 in which the Bombay High Court denied the request of a couple, Vijya Kirti Sharma, who had two daughters and desired a son to create a 'balance' in their family, to conduct a pre-natal test so that they could select a male child. The court ruled that sex determination violates not only the spirit of the Constitution, but also degrades and demeans womanhood. The court correctly stated, "It is regrettable that people are influenced by antiquated ideas regarding son versus daughter. So long as such beliefs persist, the girl child will be unwanted."Furthermore, in **Vinod Soni v. Union of India**[139], the Constitutional validity of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was challenged on the grounds that it violates Article 21 of the Constitution. But the Supreme Court rejected this argument and found the Act to be constitutional. Therefore, it is due to the efforts of the Supreme Court after examining a PIL filed in 2000 by Centre for Enquiry into Health and Allied Themes (CEHAT), the Mahila Sarvangeen Utsav Mandal

[136] 1984 Cri LJ 446.
[137] 2003 (7) SCALE 345: AIR 2003 SC 3309: (2003) 106 DLT 487(SC): JT 2003 (Suppl) SC 76.Judgement was delivered by M.B. Shah and Ashok Bhan, JJ.
[138] Times of India, September 8, 2007 at 13 (Pune).
[139] 2005 Cri LJ 3408

(MASUM), and D Sabu George, that the Government amended the PNDT Act to make it more comprehensive and renamed it the PC and PNDT Act. The Bombay High Court, upholding the provisions of the MTP Act, which prohibits the abortion of foetuses older than twenty weeks, denied Nikita and Harsh Mehta permission to abort their 25-week-old foetus, which was diagnosed with congenial cardiac disorder[140], which means that the child's heart rate will be lower than the normal 72. In this instance, the infant has a heart rate of 55. The medical professionals advised that the infant would require permanent pacemaker implantation at birth, and as pacemakers have a limited lifespan of 4-5 years, it would be necessary to replace the device in the future. Consequently, the infant may require multiple surgeries (pacemaker replacements) over the course of its lifetime, causing financial and emotional hardships for the parents. A high-tech operating room would be required to perform the procedure. Given that it is a surgical procedure, complications such as infections, anesthesia risks, etc. are inherent. After the pacemaker is implanted, there will be restrictions on the child's activities (such as swimming, sprinting, etc.). This may have negative effects on the developing brain. In general, the experts predicted that the infant would have a low quality of life. The petitioners expressed their inability to psychologically and financially support the birth and upbringing of a child with severe health problems. The petitioners asked the court to declare that Section 5 of the MTP Act is unconstitutional because it prohibits abortions after 20 weeks unless the expectant mother's life is in imminent danger. They argued that Section 5(1) should be interpreted to include the phrase "and when there is a substantial risk that, if the child were born, it would suffer from such physical or mental abnormalities as to be severely handicapped," and that the respondents should be directed to permit the petitioner (Niketa Mehta) to terminate the pregnancy. However, the Mumbai High Court denied their request to terminate the pregnancy, deeming it equivalent to mercy killing. The court noted that the medical experts had not expressed a "categorical opinion that the child, if born, would suffer from severe handicaps." The court determined that the patient has no option in the matter and cannot terminate the pregnancy after 20 weeks, as required by the MTP Act, which is the applicable law in this instance. The court stated that the legislature, in its wisdom, has imposed a period of time during which a pregnancy may be terminated. This period cannot be extended on its own by the court. In the absence of a specific provision to the contrary, nothing prevents the court from establishing guidelines whenever necessary for the effective implementation of a statutory provision. However, this would not include the authority to design laws governing the parties'

[140] "It is a Job of the Legislature to help you Alter the Provision. We Cannot Legislate the Provision", the Judges Observed. For details "HC says no to aborting 25-week Foetus" The Tribune, August 52, 2008 at 2.

substantive rights. Assuming there is a flaw or omission in the language used by the legislature, the court would be usurping legislative authority if it attempted to remedy or make up for the deficiency. Under the guise of reciting a legal provision, the court lacks the authority to legislate on a statute. This is the primary function of the legislature[141]. Shortly thereafter, Nikita miscarried. Prior to the verdict of the Mumbai High Court, the only context in which abortion was debated in India was in relation to the declining sex ratio; however, a new perspective on termination of pregnancy has emerged. Nikita Mehta's case has sparked social and medical debates in the United States regarding the necessity of increasing the legal limit of twenty weeks and amending certain laws. Such a decision will cost the couple their entire lives in visits to hospitals, medical expenses, additional efforts to generate income, etc. People will lose faith in law and justice and any prospect of receiving justice for any issue if such incidents continue. Pregnancy is anticipated to go a long way towards meeting this need. The fight for unrestricted abortion rights for women is now inextricably intertwined with the broader fight for women's equality. The line should be drawn at viability, so that before that time the woman has the right to terminate her pregnancy. Sadly, modern diagnostic techniques/tests/procedures have transformed a woman's body into a vending machine for sons. The medical community in India is divided on the issue of sex-selection, but refrains from discussing it publicly due to its sensitivity. Advocates of sex selection challenge the comprehensive prohibition on PGD and argue that the PC and PNDT Act restricts the MTP Act, trespasses on a woman's inalienable right to have an abortion, and violates her freedom to choose the sex of her child. Promoters of sex-selection argue that the government should grant access to the sex-selection facility to deserving couples because it is an effective instrument for providing the social service of "family balancing[142]" to couples encumbered with daughters. Their argument is that sex-selection has no effect on the total infant sex ratio because couples only practice it after having a few daughters. Supporters believe that sex selection liberates female foetuses from a life of discrimination and is a solution to dowry demand. They also believe that pre-conception sex-selection frees the mother from repetitive sex-selective abortions, which are typically performed in the fourth or fifth month of pregnancy. They also argue that sex-selection regulates population by preventing the birth of undesirable daughters. Such arguments are socially erroneous because sex-selection defines life quality and is not an antidote to dowry.

[141] Dr. Nikhil D. Datar and others v. Union of India and others, Writ petition (L) No. 1816 of 2008 of the Mumbai High Court, popularly known as Niketa Mehta case at para 19, 24.

[142] "It is Time for Abortion Laws to Change" available at: www.yasni.com/ext-php?url Last Accessed on 30 May, 2023.

The Mumbai High Court has affirmed that there is no inherent or constitutional "right to a balanced family." The use of diagnostic techniques for family equilibrium violates Article 14 of the United States Constitution. Creating an artificial equilibrium within the family is causing socioeconomic unrest in the nation[143]. In conclusion, we can say that the three branches of government, i.e., the Parliament, Executive, and Judiciary, have periodically enacted laws, formulated policies, and interpreted legal provisions to ensure social justice in all spheres, including reproductive justice, and to make India a welfare state. However, merely enacting laws or policies is insufficient; they must also be vigorously implemented in order to produce the desired outcome.

[143]Mr. and Mrs. Soni v. Union of India and CEHAT, 2005.

CHAPTER 7

CONCLUSION AND SUGGESTIONS

"No woman can call herself free until she can consciously choose whether or not to be a mother," Margaret Sanger said.

“The touch of a child is the delight of the body; the delight of the ear is the delight of their language." Because procreation of children is an inherent biological, social, psychological, and spiritual need of every couple, and the right to reproduce is a fundamental and innate human right, the right to decide on procreation, abortion, and sterilization should be the absolute arena of an individual, and she/he should have the right to decide about all of these issues. Unfortunately, reproductive responsibility, along with gender inequity and discrimination, damages women's health directly or indirectly throughout their lives, especially during their child-bearing years. Socio-cultural restrictions, as well as poverty and social injustice, keep women unaware of their reproductive rights, preventing them from enjoying good health and achieving an identity apart from their sexual and mothering obligations. Unequal relationships between husbands and wives make it difficult for women to have control over their own bodies, participate in fertility regulation decision-making, and protect themselves from unwanted pregnancies. The researcher observes that women are the second gender in the world, and as previously discussed, women's rights are human rights, so human rights should be recognized and implemented in their entirety, not just in papers. However, when it comes to reproductive freedom, international entities have not completely absorbed the issue in spirit, and there are still gaps and lacunas in its effective implementation. There is no harsh repercussions for the guilty state that fails to disclose information, hence jeopardizing mother and child health. This is due to the fact that international law does not become part of local law until it is expressly stated and integrated by legislation. International conventions and treaties ratified by India are not legally enforceable unless and until domestic legislation incorporating such provisions is enacted.

Despite the fact that the legislature and courts in India have made several significant initiatives to empower women, women continue to suffer. It is sad that Indian legislation is quiet on the most important topic, reproductive freedom. There is no explicit law in this respect, nor are the terms 'reproductive rights' or 'reproductive freedom' specified anywhere.

The Indian Constitution does not even include reproductive rights. Only the Supreme Court broadened the scope of the right to life and personal liberty, including the right to privacy, and decided that Article 21 grants a person the freedom to make personal judgments. Though the law recognizing reproductive interests is prevalent in a patchwork fashion, there are several laws that implicitly recognize women's right to procreate. Sexual intercourse with a minor wife of 15 years or older is not a crime in India under the Indian Penal Code, 1860. The Hindu Marriage Act of 1955 and the Child Marriage Restraint Act of 1929 (since abolished and replaced by the Prohibition of Child Marriage Act of 2006) likewise do not make a young girl's marriage unlawful. Furthermore, the Prohibition of Child Marriage deems child marriages voidable, but only in certain instances. As a result, these laws implicitly recognize an underage girl's right to marry and thereby procreate[144]. As a result, it is a critical issue that such an important matter that can affect a woman's life and requires significant attention is not taken seriously by the Indian legislature. Reproductive freedom is an essential condition for both types of women, i.e., a woman who wants to have a child and a woman who does not want to have one. Unfortunately, women are pressured into having children against their choice and are sentenced to serve as a kid vending machine for their spouse. There have been numerous cases where the husband and in-laws attempted to murder the woman who could not bear a child. Women and their right to determine their sexuality, fertility, and reproduction are considerations that have rarely, if ever, been taken into account in the formulation of reproductive freedom policies.[145]

High numbers of abortions, inadequate pre- and post-natal care facilities, and inadequate knowledge about contraception are malaises prevalent in most countries because many societies are still characterized by their customs whereby an individual's personal freedoms such as consensual sex, child abortion, and so on are dictated by cultural norms such as religious and personal laws relating to marriage, divorce, adoption, property rights, and so on. considerable proportion of teenage women suffer from varying degrees of malnutrition both throughout adolescence and during pregnancy, resulting in low birth weight kids and periods of high newborn and child mortality and morbidity. According to the study, there is a need to convey enough information on reproductive health and safe sex among teenage girls and boys. Another problem that has to be addressed is the focused approach to family planning.

[144] G. V. Ramaiah, "Right to Conceive vis-a vis Right to Birth" 9 AIR 138 (1996).
[145] Amar Jesani and Aditi Iyer, "Women and Abortion" Economic and Political Weekly, Nov. 27, 1993 at 2591.

Though the Indian government abandoned the targeted approach to family planning in 1996 in respect to international accords such as the CEDAW, which it signed, it continued to push sterilizations as a preferred technique of birth control in India. As a result, the Indian government indirectly strengthens its targeted approach. Since 1981, the government has been implementing a centrally-sponsored scheme to compensate sterilization acceptors for lost wages for the day on which he or she attends the medical facility for the procedure. The plan pays Rs.1500 per individual for male sterilization (vasectomy) and Rs.1000 for female sterilization (tubectomy) if the treatment is performed in a public hospital. However, women bear the brunt of the burden of this procedure because 96% of sterilization involves women only. This is because men avoid vasectomy because they fear losing their virility by undergoing this procedure, which is much easier and safer than female sterilization. As a result, in order to maintain control over their families, women have no choice but to endure the misery of these operations, which are unsanitary, dangerous, and inhumane. For example, in Chhattisgarh's Bilaspur, when a bungled sterilization programme was organized at a local hospital, 16 women perished. Although the Bilaspur killings were by far the deadliest episode in India's history of female sterilization, deaths and complications from tubectomy are common. For example, every month, approximately 15 women die as a result of botched sterilizations, a permanent method of birth control that accounts for 37.3 percent of India's 48.4 percent contraceptive figures. As a result, researchers believe that the incentive-based approach to sterilizations must end because it is easier to motivate the poor, women who fall prey to motivators who, in order to meet the fixed target set by the states, use women to bear the burden. The government is responsible for providing couples with a range of contraceptive options, with a preference for spacing measures over permanent methods of birth control. Furthermore, even if a couple wants to go in for permanent sterilization, men should be motivated to come forward voluntarily for vasectomy because it is much safer and less traumatic. So, after taking into account what actually happens in sterilization camps where doctors treat women like chattels for their recognition and rewards and violate all human rights, and how state governments fully violate the guidelines of the SC. This strategy is also reflected in the National Population Policy of 2000. But where are these reproductive liberties and rights? And where is the notion of gender equality when only women are compelled to undergo these life-threatening procedures? These types of incidents will not stop until governments and health professionals fully understand the concept of reproductive rights, and the health and rights of an individual should be prioritized

over the goal of 'population stabilization'[146]. Based on the study, the researcher believes that a developed and ideal nation cannot be one where coerced sterilizations are performed, abortions are restricted and restrained, but on the contrary. It will be in the best interests of society if individuals decide for themselves whether to be sterilized, procreate, or have abortions without state coercion. If women are given the ability to regulate the size of their families, the birth rate would naturally fall, which is a pressing requirement at the moment, and there will be no need for the government to engage in personal matters in the name of "population stabilization." When India got independence in 1947, it had a population of roughly 35 crores; now, the population of India is 1.27 billion, and it is expected to grow to 1.53 billion by 2030. As a result, one of the most serious issues confronting India today is population growth. Furthermore, the nation's expanding population will have a negative influence on its residents from the standpoints of the ecological, social, economic, and political. Increasing population threatens human dignity, infringes on basic human freedoms, and makes it difficult for the state to carry out societal development objectives. Further population growth will increase pollutants in the atmosphere and contribute to global warming. It disrupts the country's whole development structure. In such a circumstance, all of the state's development strategies and aspirations will collapse. As a result, India has a greater need for population reduction than any other nation. As a result, if individuals have the right to make their own reproductive choices, both individual and social interests will be served, and the outcome will be better in the best interests of society.[147] Thus, for the ideal development of the nation, it is critical that women have an absolute right to decide whether to be pregnant or not, and if they choose motherhood, how many children to have and when to have. Legal abortion is said to be a better option for women's health than illegal abortion. If abortion is not legalized, it will impede a woman's overall development and may have a negative impact on her health. It violates her essential human right as well as the victim's most valued Fundamental Right, the Right to Life, as stated in Article 21 of the Indian Constitution. As a result, if Article 21 is to have any value for women, the decision to have and raise a child should be solely hers. Now, practically every civilized society with a sovereign state recognizes the woman's right to abort, but only under specific limitations and safeguards.[148]

[146] "Killing Women to Curb Population" Economic and Political Weekly, Nov. 15, 2014 at 7-8.
[147] Subhash Chandra, "Right to Abortion: A New Agenda" AIR Jour 134 (1997).
[148] Monica Chawla, "Law Relating to Abortion in India" III Pbi ULJ 159 (2009).

Analyzing Abortion Law in India After a lengthy fight and the tireless efforts of medical experts and social workers, the MTP Act was enacted in India to liberalize abortion regulations. It is not intended to foster sexual promiscuity or to degrade moral standards. Every adult woman should have the choice to choose whether or not to have children. Refusing that right is mistaken with morbid thinking or confusing hypocrisy on society's behalf. In addition to married pregnant women, the Act correctly allows an unmarried girl to get an abortion if she so wishes. The Act includes numerous responsible components that tend to operate in the direction of bettering the interests of the mother, the family, and society. The Act is primarily intended to rationalize rather than liberalize society. As a result, the newly presented Act has limits and prohibitions. It also specifies the terms and situations under which abortion may be performed. As we have seen, the MTP Act of 1971 allows for pregnancy termination only up to 20 weeks of gestation. It is maintained that abortion regulations should be loosened, as they are in the United States and England, where an expecting woman may abort the foetus as early as 24 weeks of gestation. It is vital to note that even after viability, which may occur between 24-28 weeks, the woman might abort the pregnancy if the baby is at danger. Given that in England and America, termination of pregnancy is possible even beyond viability if there is a danger to the unborn, it is plausible to infer that the limit of 20 weeks under the MTP Act is an unreasonable restriction on the pregnant mother's liberty. As a result, the MTP Act must be amended since it has become outdated. Furthermore, the primary goal of prenatal diagnosis is to avoid the birth of a malformed kid. The entire goal of prenatal diagnosis is rendered meaningless if abortion is not permitted even when gross abnormality is confirmed.[149] However, the situation in India is quite disturbing because prenatal diagnostic techniques, while useful for detecting genetic or chromosomal disorders, etc., are widely used to determine the sex of the foetus and to terminate the pregnancy if the unborn child is found to be female. However, others believe that carrying the foetus would be dependent on the woman, and that the right to life envisioned in Article 21 of the Constitution includes the right to select the sex of the child. To deny a woman the right to choose the composition of her family would be an infringement on her freedom. They say that they are too private to be violated. Allowing a woman no more say in the issue would result in several pregnancies. She will continue to have children till she has her choice. If the number of unwanted females continues to rise, they will be mistreated and exploited. A formal prohibition would also encourage the sinful practice since physicians would feel threatened. As a result, the cost of the test would rise. others who

[149] Sarabjit Kaur, "Need to Amend Abortion Law in India" 1 JOLTI 43-44 (2010).

can afford it will have the test and abortion done in sanitary and well-equipped facilities, while others who cannot afford it will suffer. However, this is not a solid argument since this practice indicates a basic devaluing of women. As a result, it is argued that although the right to abortion should be granted, it should not be at the expense of female foeticide. The right to personal liberty cannot be enlarged by any stretch of the imagination to forbid the conception of a female or male foetus, which must be decided by nature. The right to create a future life with the ability to choose the gender of that life cannot be ethical in and of itself. As a result, it might be argued that a woman's right to abortion is necessary to guarantee her control over her reproductive process, but the choice about whether or not she wants the kid must be made regardless of the sex of the unborn. As the kid sex ratio threatens to disrupt society's gender balance. A decrease in the number of female offspring will cause numerous new difficulties that may be intractable. So it is proposed that the mother may do much to stop this practice by introspecting herself; else, she would not be here. Those women should consider if they wish to develop their family's bloodline or wipe out the whole generation. Goddesses do not live in heaven, but within our bodies, or in the true sense, inside the mother's womb. The problem does not appear to have a solution in the near future, as long as the government avoids sensitive issues surrounding abortion; couples will continue to find themselves in the same predicament. Political will is critical in addressing the issue. Rather than seeing abortion as a problem, the government should emphasize its origins via education efforts on safe sex, contraceptive usage, and the distribution of emergency contraceptive tablets. Medical facilities must also be improved in order to lower the number of unsafe abortions and instances of high MMR and IMR. The government may collaborate with organizations such as the United Nations to bring about qualitative improvements, similar to how it collaborated in its fight against drug abuse. Another problem that requires addressing is artificial reproductive procedures. As previously stated, the basic right to reproductive autonomy includes both the freedom to forego reproduction and the right to reproduce with the help of technology. An examination of court rulings under Article 21 of the Indian Constitution demonstrates that the right includes the right to live with dignity and liberty. Article 21 readily accommodates the right to have a family and progeny. The ability to select the technique of reproduction is likewise one of the rights protected by Article 21. What must be ensured is that this liberty is not exploited for the exploitation and abuse of others' rights. As a result, in a liberal democracy that believes in the rights of individuals, new technologies and modes of reproduction should be permitted unless there is evidence that liberty is being used for the exploitation and violation of others' rights. It can thus be concluded that the law requires a balanced approach. It should not just operate as a regulator, but also as

a facilitator of scientific progress. It is, however, equally necessary to guarantee that, while encouraging scientific breakthroughs, the fundamental precepts of law and the fundamental human values on which the whole notion of human rights is based are not jeopardized. Control over one's body is, without a doubt, an essential part of being an individual with rights and needs, but it is also problematic because it involves moral questions about when, under what conditions, reproductive decisions should be made or whether it is permissible to use contraception to avoid conception, and so on. Abortion is another contentious subject. There are certain places where perfect freedom is not attainable, and it is appropriate to limit its exercise. So it is the responsibility of society, medical experts, and social workers to weigh the merits and downsides of reproductive freedom and determine if and to what degree constraints on reproductive freedom should be placed. Cloning, for example, presents a significant danger to society, and the risks exceed the benefits, hence it should be prohibited at all costs. Similarly, sex selective abortions should be prohibited since the human cost would exceed the advantages. Otherwise, reproductive freedom benefits everyone, whether men, women, or children, and is morally justifiable. With this in mind, women's human rights of all types have been recognized worldwide, as well as by local constitutions and organic laws. The courts sought to play an essential role as well by recognizing and defending their rights, particularly human rights. In actuality, the image is the same as before with just a little modification. So, the need of the hour is for human rights contributions to be made through setting standards, implementing these standards, and publicizing them. The government must devise programmes to enable people to live with dignity and respect, to improve moral and social values, and to instill a sense of realization of human rights in the minds of the people so that they are aware of their importance and refrain from violating human rights. As can be seen from the preceding explanation, our assumptions are shown to be valid, and so the hypothesis as stated is recognized to be true. Based on the study's difficulties and shortcomings, the researcher proposes various ways to safeguard and encourage reproductive freedom.

Suggestion

1. The Right to Marry and Have Children

No department of government, whether legislative, executive, or judicial, may interfere with a person's decision to have another child or not to have any child at all. The government shall not mandate the use of contraception in any way, nor must it prohibit or severely limit the availability and accessibility of contraceptive methods.

2. The Right to Decide Freely and Responsibly on the Number and Spacing of Children

Governments should not interfere with a person's choice on the number of children wanted and the distance between them. Furthermore, the number of children per household should not be prescribed or established. A government would be held responsible for failing to meet its responsibilities if, for example, care facilities, health subsidies, maternity leave, and access to property in rural regions are conditional on compliance with state-imposed child-cap limitations. Contraception should be made available to the whole community so that people may exercise their right to responsible parenting consciously.

3. Child Marriage Prohibition and the Need to Amend the Act

The government should take all necessary efforts to abolish the scourge of child weddings and severely enforce laws that prohibit child marriages. Although there is legislation prohibiting child marriages, in reality, this legislation is not followed in letter and spirit because child marriage is declining slowly, and there is a need to amend the current Act along with Hindu Marriage Act 1955, which makes child marriage valid and not void. No one can dispute that girls who marry at a young age are more likely to get pregnant and have more children at a younger age (which may be harmful to their health and deprive them of the right to an education) than those who marry later. There is a need for consistent ages for bride and groom since the current Prohibition of Child Marriage Act puts forth the minimum but varied ages of marriage for both parties, which is discriminatory for girls. Furthermore, both spouses must provide their free and informed permission, and all weddings must be recorded. If any of the above requirements are not met, the marriage shall be declared null and invalid.

4. Contraception is available for free

Contraception is essential in a person's sexual life. Furthermore, the rise of AIDS has increased the use of contraception. Because, as the saying goes, "prevention is better than cure," it is preferable to utilize contraception to avoid abortion. Nowadays, there are a range of contraceptives available that may successfully prevent conception, such as female and male sterilization, contraceptives, condoms, cervical caps, IUCDs, and so on. However, since most individuals are unaware of these techniques, it is advised that the government take a constructive role by making contraception more accessible. Furthermore, it is the responsibility of medical practitioners to advise all patients presenting for MTP on the use of contraception. It should be emphasized that using contraception is much safer than having an abortion. In the event of contraceptive failure or accident, women should be urged to take emergency contraception.

5. Abortion should be legalized if the child is born with a deformity

It is true that health is wealth. If a normal individual does not have excellent health, all of life's pleasures slip away for him. If this is the situation of a normal person, one should not discuss the wretched existence of a person born with major defects. As "life" in Article 21 of the Constitution has been interpreted by the Supreme Court as "living with dignity," if a person cannot lead a dignified life and his life is equivalent to that of a helpless creature, it is better not to bear such a helpless child who will have to rely on others for the rest of his life. From the standpoint of the parents, if the couple is from a middle-class household and is unable to handle the exceptional spending on the care of such a kid, the issue is whether the cost will be covered by the State. Having such a kid in the family requires at least one adult to be completely committed to the child, abandoning his or her own aims and aspirations in life in order to care for the child. Who will care for the kid if both parents have died? If the state is unable to care for such a kid and he is left to perish on the streets, abortion is a preferable alternative. Furthermore, since the State does not offer social assistance or public funds to care for unique children, the law cannot compel people to have abnormal children.

6. Amendment to the Medical Termination of Pregnancy Act of 1971

There is a need to change the MTP Act since it is seen as a tool of population control rather than expanding reproductive options. As a result, the rules must be changed to avoid abuse and to guarantee that it improves rather than restricts women's reproductive freedom. Furthermore, prejudice against unmarried and married women should be eliminated. Contraception failure as a reason for ending pregnancy must be recognized for all women, married or unmarried. Furthermore, standard costs for termination of pregnancy should be established in all hospitals, whether government or private.

7. Amendments to the Indian Penal Code

Some sections of the Indian Penal Code must be amended. Section 312, IPC, for example, should be appropriately updated in accordance with the MTP Act, 1971 to cover all of the circumstances for which a pregnancy may now be terminated by a certified medical practitioner. Furthermore, Section 375 of the Indian Penal Code, 1860, which legalizes sexual intercourse between a husband and his wife if the woman is beyond the age of 15, must be amended. Despite the fact that the Criminal Law Amendment Act of 2013 modified the IPC, this clause has not been updated. As a result, this provision of the IPC implicitly promotes child marriage.

8. Measures to Combat Female Foeticide

- The government can play a critical role in eradicating the practice of female foeticide. The government could provide incentives to girls by providing free schooling, additional rations, and tax breaks for their parents. Rather than sting operations, this may be the most successful method. Furthermore, in countries such as India, where both the problem of increasing population and female foeticide exist, the single girl child should be made a separate category, similar to other reservations such as SC's and ST's.
- The Dowry Prohibition Act should be implemented in its entirety. Strict action should be taken against dowry harassers.
- There should be a specific law providing social security for old people so that they do not rely on their sons for financial support.
- The use of technology that allows couples to determine the sex of the foetus and thus terminate the pregnancy should be prohibited by domestic law.

- No unnecessary restrictions should be imposed on the private clinics. These regulations will either compel them not to register their clinics and so perform abortions via the back door for a high fee, or they will refuse to do so. This prevents women from receiving sophisticated services from the private sector.
- Existing rules on female foeticide should be reinforced without compromising women's reproductive rights or population control concerns. Norms and norms that give women unfettered access to pre-conception and pre-natal sex determination for medical reasons should be established.

9. Prenatal and Postnatal Care

It is widely acknowledged that a child's health begins during pregnancy. Prenatal care includes screening all mothers for high risk pregnancies for referral and special care identifications, as well as treatment of severely malnourished mothers, distribution of iron and folic acid to all pregnant mothers in the last 100 days of pregnancy to combat anaemia, education for health personal hygiene, nutrition, immunization, fertility regulations, and regular check-ups at the home and clinics to monitor maternal health and foetal growth. As a result, the mother's health must be preserved not just during pregnancy but even before she conceives in order to guarantee safe delivery and healthy offspring. Post-natal care is also vital, and is frequently provided on the same day as newborn care. Around six weeks following birth, the mother should be examined by physicians to ensure that she has recovered to normal health. This would also be a good time to provide guidance on future pregnancy spacing.

10. Sex Education

It is proposed that all schools provide sex education to their pupils. There is a need to organize several workshops and seminars to provide sex education in which open conversations regarding this contentious subject are held. The primary goal of sex education is to provide information about HIV/AIDS and to raise awareness about safe sex practices and sexually transmitted diseases. It is obvious that sex knowledge is more significant than legal knowledge.

11. The Media's Role

The media may play an important role in delivering reproductive health care. Because they can put pressure on the government to enact laws that benefit people. However, they continue to avoid discussing health-related topics. They may expose instances of serious violations of human rights in reproductive affairs, offer information about health services to individuals in need, and work as a liaison between the government and the people.

12. Medical Practitioners' Roles

The medical profession is the most honorable and respected profession in society. As a result, physicians have an ethical obligation not to provide treatments that are harmful to their patients' health and to prevent their patients from getting services to which they are not legally entitled. Medical education must instill in physicians ethics, gender sensitivity, and responsibility. It is the responsibility of medical practitioners to impose self-regulations to guarantee that they do not engage in unethical or illegal practices.

13. The Role of Non-Governmental Organizations and the Judiciary

Furthermore, Non-governmental organizations and volunteer groups should be encouraged to conduct programmes to educate individuals about the possible repercussions of unsafe sex and abortion. They should inform and advise women, children, and people living with HIV/AIDS, as well as people with disabilities and refugees, on their rights and how to defend them. Many women are unlikely to be able to make a different decision based on facts since their economic status and general infrastructure do not allow it. However, for others (even if they are small in number), such knowledge may make a difference in their lives and perhaps avoid unsafe abortions, which result in increased morbidity and death. The involvement of the judiciary and national human rights institutions is likewise a significant step in that direction. The Judiciary and the National Human Rights Institution must be proactive rather than reactive. Public opinion, as well as strong alliances and collaborations with non-governmental organizations (NGOs) and human rights campaigners, offer a great tool for influencing the national agenda on human rights.

14. Regulation of Sterilization, especially in Camps

The government should not encourage forced sterilization in order to manage population since the bulk of those who have these procedures are impoverished women who must have tubectomy in order to control population. This is the most heinous form of human rights violation because females are treated as chattels in female sterilization camps, and doctors perform the operations in haste and in unsanitary conditions without regard for the women's health, leaving them in excruciating pain after the surgeries in order to meet the requisite target set by the states. So sterilization should be legally regulated and legal norms should be established, including proper medical infrastructure and an adequate number of medical professionals to conduct surgeries with the consent of the person concerned after various tests are required to be conducted before the operation to determine whether the women are fit to undergo that procedure or not, as well as disclosing the risks involved. And sterilized equipment is extremely important for safe sterilization. No camps should be organized without the civil surgeon's prior approval, and he should offer his consent only when these prerequisites are met, as well as by advising the organizations organizing such camps to maintain adequate cleanliness and provide post-operative care. Furthermore, victims of forced sterilization should be compensated, and those responsible should be punished.

15. Abortion legislation Uniformity Throughout the World

It is proposed that abortion legislation be consistent throughout the world. At the moment, each nation has its own abortion legislation, which lacks consistency. Some nations take a conservative approach, while others take a liberal or restricted approach, while yet others provide unlimited freedom of choice. As a result, having an abortion is dependent on where the individual resides. If the individual lives in a state where abortion is permitted, she is fortunate; nevertheless, if she lives in a state where abortion is prohibited by religious or ethical principles, she is unlucky. As a result, there should be certain worldwide norms, and each country should adhere to such criteria. Despite several statutory requirements and the efforts of the judges, there is little change in the destiny of women, but they continue to suffer. There is an urgent need for appropriate laws to increase reproductive freedom. However, given the prevalence of human rights breaches and atrocities against women, the government must fill the gap by creating particular laws to empower a woman by strengthening an individual's reproductive independence.

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