

WOMEN'S RIGHT AND ABORTION: A JURISPRUDENTIAL ANALYSIS

Dr. Amit Kashyap*

Assistant Professor, Centre For Law, CUPB-151001

Satish Singh**

Student of 1st Year, LL.M., Centre For Law, CUPB-151001

Abstract:

This paper deals with the issue of abortion and a women's right. Although, abortion has been the very controversial issue which is still subsisting in the nation in a questionable form. Moreover, now there are two groups of different opinion related to abortion. One is a conservative group or so-called pro-life group which opposes abortion and consider it as sin. That group mostly formed of theologians, priest, maulvis, etc. Although on another side we have a liberal group or so-called pro-choice group. They consider that the women shall have the Right to have the full control over her body and to decide what to happen or not happen with them and as such it shall be at the discretion of a woman that she is willing to abort or not. Sincerely, dealing with such type of issues this paper has remained divided into seven parts and which consist of Introduction, meaning, and history of abortion & its laws about the study of various countries including India. The legal position of the unborn child in the womb and battle between the right of a mother and right of an unborn. The present laws of abortion concerning various countries and how they have been liberalized or have been made strict, jurisprudential analysis of the right of unborn and of a woman in the context of social engineering and utility principle, Roe v. Wade judgment, conclusion/suggestion.

Keyword: - Abortion, Right, unborn, woman, pregnancy, termination of gestation.

Introduction:

Jennifer (fictional name) a girl of 21 years old and a student of graduation 2nd year were in a relationship with a boy named Andrew (fictional name) who was 23 years old and was an engineering student. They both were in a relationship for three years long, due to the very closeness and a powerful sex appeal against each other lead them to intimate, several times. After all, they were both seasoned and were careful of the many types of contraceptives readily available in the market. So they use contractive each time whenever they intimate, but on one occasion due to failure of the precaution they taken Jennifer got pregnant until four weeks she wasn't aware of her pregnancy, it was after four weeks i.e. one month she found that she was pregnant. The primary thing which she had done after knowing it. The girl informed about it to her boyfriend Andrew, but the girl got a negative response as he stopped talking with her and do not pick up her calls. Moreover, he changed his phone number, and this made her very much upset. But as if, she was mature enough and was aware of the abortion pills available in the market. With her friends, they were of her age group only and had already gone through illegal abortions. And also through the internet source, armed with that much knowledge only she on her initiative had passed to the pharma vendor and purchased the abortion kit, though that abortion kit cannot be sold legally without the doctor's prescription.

The girl had consumed the pill according to the directions given in the instruction paper along with the case packet. After, two days she started heavy bleeding along with acute pain on her right side of pelvic she couldn't sleep for around ten days on her right side as it hurts her a lot. When her situation got worst due to continuous bleedings and severe pain, and she disclosed about it to her friend. Her friend after consulting with some other girls suggested her to go to a doctor whose clinic was in the model town area. Jennifer got the appointment and met with the doctor after an ultrasound and a pelvic examination latter; the doctor confirmed her that she had an incomplete abortion and because of the pills she took to abort she got an infection also on her right side of the abdomen. The doctor suggested her to go for surgical evacuation to remove the remaining part and told her that it would cost around Rs. 15,000. Jennifer was ready to go for it although she was aware that the charge is too much high and that doctor is neither a gynaecologist or obstetric. Whereby she managed the said amount through her friends and from her pocket money which she used to get every month from her parents and got the surgical evacuation after which she thought that now everything is okay.

But just after the month only two extreme situations simultaneously occurred with her. First, she started having severe pain in her whole abdomen, and at the same time only she got a phone to confirm her address for delivery of something and soon after the 15 min of that phone call police came to her house and arrested her. Police got her phone number from the register of that model town doctor whom they have detained on the charge of pre- natal diagnosis technique and of performing sex-selective abortion Jennifer too was arrested on the invasion on sex-selective abortion. Her parents were so furious with her after knowing about all such incidents. They have also stopped talking with her, and this caused her a tremendous mental trauma. In addition to the acute pain, she was suffering from in her abdomen. According to on after the proper medical examination, it was found that her womb got perforated due to improper surgical evaluation. Due to which she had lost her conceiving capacity that model town doctor besides that her liver had also got damaged due to high, and over dosages of pills and later on after 6-7 month she died due to that liver infection accompanied by mental trauma.

This type of situation occurs after every 10th day almost in every part of the world as in a day sexual encounters taking place between married as well as between unmarried in all over the world in uncountable. Out of these sexual encounters it is mainly the single women who all are vulnerable to such type of situations and suffer a lot on account of social pressure; confidentiality; not- supportive nature of their partner; poverty; lack of knowledge, etc. Jennifer's story reveals that how much the female sexuality is controlled, moralized and stigmatized. The story Jennifer is a fictional illustration created by me order to explain such types & their consequences here in this story Jennifer would have died if she would have the right to abort legally. There are many such and different kind of situations which occurs in many women's life and as a result of which either they want their future conceiving capacity, or they die due to some medical reasons. Anywhere such situations may be controlled by providing safe abortion to every woman on demand as their fundamental right and not just little a legal right.

It is important here to note that though abortion is an intentional act of women in which the consent of a spouse may or may not be involved, has historically been a highly controversial issue.ⁱAs a woman's ability to choose whether to experience childbirth, end it prematurely or to use her reproductive capacity as a means of income or to benefit other i.e. surrogate motherhood, varies not only from country to country, but also according to cultural and religious preferences.ⁱⁱThe subject has social, religious, ethical, medical and legal dimensions. Some of these

dimensions raise complex and delicate questions which remain frequently strained with emotion. It will also last seen that there are several parties or personalities involved in abortion, including the unborn child, the prospective parents, the medical practitioner and the society in general.ⁱⁱⁱ As a result of which there have two groups of different ideologies have remained isolated on the issue of abortion. One is a conservative group who happens to consider as "Pro-life" movement activists they mainly consist of priest, ethical & religious dominant person who argue that there is no rational basis for distinguishing the foetus from a newly born infant. They regard the foetus in all stages of pregnancy as an unborn/new-born requiring protection.^{iv} While on the other hand there is liberal or "pro-choice" group who advocates for the women's right to choose whether to abort or not. They regard that women shall have the complete right over her body to control it as they think that the human life begins at birth or more technically when a foetus is so developing that it is capable of living alone if removed from her mother's womb.

Before going further over the adverse nature of the right of women and an unborn child let us know what the abortion is and what is its nature and kind.

Abortion is the end of a pregnancy after, followed by, resulting in, or closely matched by the death of the egg or foetus: such as

a spontaneous expulsion of a human foetus during the first 12 weeks of gestation.

b induced expulsion of a human foetus.

c removal of a foetus by a domestic animal often due to infection at any time before completion of pregnancy.^v

The abortion does the effect in two ways except for the traditional methods of terminating the pregnancies as:-

1. **Medical method**- Abortions made with medication, called medical abortions, are done within 49 days from the start of the pregnancy. Pregnancy usually begins two weeks after the first day of a menstrual period. Therefore this epistolizes to nine weeks from the last menstrual period. The medicines used to cause abortion cover **Mifepristone (Mifeprex)** Known as RU-486 and Mifepristone are used orally as a pill recommended for treatment in the United States in 2000. That drug counters the effect of progesterone, a hormone necessary for pregnancy and **Misoprostol (Cytotec)** Misoprostol is almost invariably used in combination with mifepristone to induce a medical abortion. Misoprostol is a prostaglandin-like drug that causes the uterus to contract. Out of these both drugs, one can have by mouth, and the other through the vagina.

2. **Surgical Method**- it performed through several ways as:

- **Menstrual Aspiration**: This procedure is also called menstrual extraction or manual vacuum aspiration which does give in one to three weeks later a fumbled menstrual period. The system can further be used to kill the remaining tissue of an incomplete miscarriage (also called a spontaneous abortion). A doctor injects a small flexible tube into the uterus. By the cervix and employs a hand-held syringe to pull out the pregnancy body from inside the womb. The local anaesthesia is frequently used to the uterus to reduce the pain of dilating the cervix. Local anaesthesia deadens only the area injected and the person remain conscious. Medicine

transmitted intravenously (into a vein) can reduce stress and the body's general reply to pain. Menstrual hope lasts about 15 minutes or less.

- **Suction or aspiration abortion.** Sometimes called a suction D & C (for dilation and curettage). This method can be done up to 13 weeks after the first day of the last menstrual period. Suction D & C is the method most generally practiced to end a pregnancy. The cervix remains stretched (widened), and a set hollow tube equally implanted into the uterus. An electric pump senses escape of the contents of the uterus. This method needs about 15 minutes. Local anaesthesia is usually used to the cervix to lessen the pain of stretching the cervix. Medication dispensed intravenously (into a vein) can help to decrease stress and reduce anxiety.
- **Dilation and curettage (D and C).** In a dilation and curettage, the cervix is open instruments with sharp edges, known as curettes, which are used to remove the pregnancy tissue. Suction is often used to make sure all the contents of the uterus do shed. In an earlier time of gestation, this procedure remains to stay done. The less the cervix has to be dilated, which makes the process easier and safer.
- **Dilation and evacuation (D and E).** That is the most common method amidst completing a pregnancy within 14 and 21 weeks. It is related to the suction D and C but with higher instruments. The cervix has to be enlarged or stretched open to a size bigger than needed for a D and C. Suction is applied along with forceps or other special instruments to ensure all the pregnancy tissue remains removed. The method takes more time than other abortion procedures.
- **Abdominal hysterectomy.** That is a major operation to remove the foetus from the uterus through an incision in the abdomen. That is rare but may be necessary if a D and E cannot last performed. Anaesthesia will make you unconscious for this surgery.^{vi}

It would be important here to note that the role of pharma vendors in promoting illegal abortion is very much active. As due to the widespread availability of these drugs in the market. The pharma dealers company to earn profit sell these medicine without doctor's prescription which is entirely wrong. Since a maximum of the pharma vendors is untrained and not skilled. So they are unable to give proper and correct advice to the patient thus accurate information on how to apply the medications safely and efficiently is rarely offered and by providing such medicines on demand of their customers without doctor's prescription mainly in rural areas and also in urban areas they are promoting illegal abortions.

Background of abortion and its Laws:

The practice of terminating the pregnancies has continued acknowledged since the time immemorial, and it can be evident from the various types of abortifacient herbs present and used in earlier days like *Tansy, extinct, silphium, pennyroyal, ripe papaya, etc.* A list of plants which cause an abortion did provide in *De various herbarium*. An 11th century herbal written in the form of a poem, the authorship of which does incorrectly ascribed to Aemilius Macer. Although, it would be ample to note at that time the laws on abortion did not liberalize. And it was illegal to cause at any stage even after the single day of conceiving as the code of Hammurabi, 1760 BC specified fines for causing a miscarriage through assault, with the amount of varying according to the woman's social rank.^{vii} Whereas the ancient Vedic and Smriti

texts have also illegalised the causing of abortion and show concern for the preservation of the male seeds of upper three castes mainly and the sacred courts imposed several penances for the woman or excommunication for a priest who provided an abortion.^{viii}The Kaushitaki Upanishad describes abortion as equivalent to killing one's parents. The Atharva Veda lists the Foetus slayer, bhrunaghna, among the greatest sinners.^{ix} The only evidence of the death penalty existing charged for the abortion in the ancient laws and found in Assyrian Law, in the Code of Assura, C. 1075 BC; and this is imposed only on a woman who procures an abortion against her husband's wishes.^x

Whereas in the modern era the laws of abortion vary from States to other States according to the convenience of the States. As in China before 1950, abortion was illegal, but after 1980, the law on abortion did liberalize as one of the methods of the population control. In India, up to 1971 abortion was totally illegal, and it did administer by the IPC (Indian Penal Code), but after 1971 the law on abortion has been liberalized, and it has been made legal under certain particular circumstances through Medical Termination of Pregnancy Act, 1971.

In spite of having the low population, Japan is known today worldwide for its acceptances of abortion. The Eugenics protection law of 1948 had done the abortion on request legal up to 22 weeks of the gestation period. So long as the woman health did endanger and by 1949 this law was extended to consider the risk of childbirth for woman's economic condition and a decision to abort lies between the woman and her doctor privately. In Romania, the law of abortion was liberalized up to 1966 but after 1966 in was restricted as there was the decline in the national birth rate. As a result of such restriction, there has been much death caused due to illegal abortion until 1989 when it was again made legal to abort. Whereas, in the case of Russia in 1920. The Soviet Republic of Russia became the first country in the world to allow the abortion in all circumstances. After 1936 to 1955 it has lingered out arising chiefly from Joseph Stalin's concern over population growth. As he wanted to encourage population growth there, but again after 1955 it was liberalized, and the present law of abortion in Russia permits abortion up to 12 weeks and in exception cases up to 22 weeks of rape, medical, etc.

Analysis: - After going through the above data, it can do conclude that the laws related to abortion during the postmodern era were mainly Male dominated laws. They were a concern only for the protection of seeds of the men and did not consider the right of woman's and also at that period the punishment did administer according to the caste of the women, and there was no universal penal law over it. Secondly, the choice of a female was immaterial. While through the modern era it can be seen that the laws related to abortion did significantly determine by the National Interest of the particular countries. According to which only it was liberalized or restricted according to the need and demand of the national interest of the country and feeling of personal liberty over once body was given less concern.

Legal Status of Unborn:

*"A human being does not acquire a soul until the moment of birth: with the child's first breath the soul is infused from outside of the mother's womb"-
Plato*

Legal personality of natural persons begins at birth and extinguishes with death with the result that pre-birth, post-death steps are devoid of any legal persona. As the right understanding of the concept of 'person' or 'personality' revolves around possession of rights and capacity to discharge rights and duties. Therefore, as a general rule of law, an unborn child do not pose the legal personality. Despite, there are certain limitations, where the unborn does indeed is given the benefit as a person before the law as property, shares, etc. But all these exceptions are contingent in nature, and not in factual in nature means that they are dependent upon the happening of the particular events i.e. live birth of the child.

In "*McKay v. Essex Area Health Authority*"^{xi}It did show that a foetus is not a legal person as to what a doctor can lawfully do by statute to a foetus what he cannot lawfully do to a person? Who has been born (that means a physician can legitimately abort a foetus under the termination of pregnancy laws while he cannot kill any living body)? The Even not action of tort against the unborn does recognize for e.g. no can be punished for causing assault to unborn. Like individual rights of a deceased/dead person. Law recognizes such rights as a corpse, his reputation, his estate, but it does give it a legal personality after his death the same is with the case unborn foetus also only for the purpose of protecting his one interest he is assigned the being of a legal person otherwise not.

Paton, the jurist he did not recognize a child in the womb as a juridical entity.^{xii}Under English law, an unborn child has no legal rights until it is born alive as held in "*Paton v. British Pregnancy Advisory service Trustees (1979)*". An unborn infant cannot sue or recover damages and, in "*R v. Tait (1990)*". A threat to a pregnant woman to kill her unborn child was held not to be a threat to kill a third person under the offense against the person Act, 1861, section 16 because a foetus is not a person distinct from its mother. However once born alive, a child can retrospectively apply its rights back into the womb.^{xiii}While an unborn child has no legal personality. A conflict of interests between the mother and the foetus should be resolved in favour of the mother. Only as it is she only who is the real legal person at that present time having the fundamental right to life and personal liberty including privacy and it should be her private matter to decide whether to abort or to not.

It would be important to bring into her notice that the viability of foetus i.e. its ability to survive outside the uterus. According to medical status generally from 23rd weeks of gestation which means that the foetus can after this stage can survive lonely and can acquire a separate personality from the mother, and it is in the second trimester only the sex determination of the child can be identified. Thus in that case of conflict between the mother and the prospective child right of an unborn child shall prevail according to my opinion.

The dispute between the right of unborn and mother arises due to traditional beliefs. Many people believed and gave respect to the unborn foetuses than living, breathing women. Often seeing later as only a kathputali to play the role of wife and mother as a result of which women's reproductive capacity has remained tightly restrained by the needs of the society, and she is pressurized to have children of which she doesn't want to and can't afford care. Thus there a need arises to harmonize these conflict between them. Since the vast majority of abortion usually occurs within the first trimester thus in such case the right of the mother should prevail.

Present Law of Abortion:

In 1964, the government of India had constituted a Shanti Lal Shah Committee. To study the question of liberalization of the miscarriage (abortion) laws contained in Section 312 of IPC which make induced abortion illegal except to save the life of the woman. As many deaths have happened due to unsafe abortion and population was also the matter of concern. The committee after making a careful study of the pros and cons of the entire issue and taking a pragmatic view of the socio-economic and legal problems involved in cases of unwanted pregnancies, the committee recommended to the government for amendment in the outdated and outlived the law of miscarriage contained in Section 312 of IPC. The government of India after a careful consideration of the recommendation of the committee brought forth in 1970 a comprehensive bill in parliament as MTP Bill, 170 which did eventually passed by both the House in August 1971 and as such the Medical Termination of Pregnancy Act, 1971 was made.^{xiv} This Act guarantees the Right of and every woman to terminate her unwanted pregnancies under certain specific circumstance only through a registered Medical Practitioner in a hospital maintained or approved by the government of India. While Section 3 of MTP Act, 1971 deals with the conditions under which pregnancy may do terminated which are classified into three categories i.e. health ground, humanitarian reason & eugenic Ground as:

When pregnancies may be terminated by registered medical practitioners. -

1. Not with standing anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offense. Under that Code or any other law for the time being in force, if he terminates any pregnancy by the provisions of this Act.
2. Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, -
3. Where the term of the pregnancy does not exceed twelve weeks and if such medical practitioner is, or
4. Wherever the length of the pregnancy exceeds twelve weeks, but it does not exceed twenty weeks. If it continues performed not less than two registered, medical practitioners and they do, of view, which is to last made in good faith so:

(i) The continuation of the pregnancy would prove a risk to the life of the pregnant woman and or of grave injury to her physical, mental well-being; or

(ii) There is a visible risk that if the child is born. It will yield from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.-Where any pregnancy is alleged by the pregnant woman to have induced by rape. The pain caused by such pregnancy shall be assumed to establish a grave injury to the mental well-being of the pregnant lady.

Explanation 2.-Where any pregnancy transpires as a result of the failure of any means or method applied by any married woman or her husband for the purpose of limiting the number of children. The distress made by such undesired pregnancy may be considered to constitute a grave injury to the mental well-being of the pregnant lady.

(3) In settling whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), the account may last taken of the pregnant woman's actual or just foreseeable conditions.

(4) (a) No pregnancy of a female, who has not achieved the age of eighteen years. Or, who, having attained the age of eighteen years. Who is a [mentally ill person], must remain eliminated but by the assent in writing of her custodian.

(b) Same as otherwise is provided in clause (a); no pregnancy shall be terminated, except with the consent of the pregnant woman.

It would be important here to note that on the face of it, abortion is legal in India unlike in a no. of western countries but women have hardly any control over their reproductive future.^{xv} It can also be obvious that women's right to control their sexuality, fertility, and procreation did not provide the basis on which the MTP Act did formulate or interpreted.

Whereas in U.K also the law for abortion has legalized the abortion under some instances as, In England and Wales and Scotland, Section 1(1) of the Abortion Act 1967 reads as:

Subject to the terms of this section, a person shall not be guilty of an offense. Under the law correlating to abortion and when a registered medical practitioner terminates every fertility. If two registered medical practitioners are of the opinion, formed in good faith-

(a) That the pregnancy has not surpassed its twenty-fourth week and the continuance of the pregnancy would involve greater risk. Should pregnancy be allowed rationally or not? Each injury caused to the woman on the material or subjective well-being of the pregnant lady.

(b) So the outcome of the pregnancy is needed to prevent the failure and the constant injury to the physical or mental well-being of the pregnant lady.

(c) That the continuation of the pregnancy would affect danger to the life of the pregnant woman, greater than if the pregnancy did terminate.

(d) So there is a real chance that if the child is born and then it would yield to such physical or mental abnormalities as to be seriously handicapped.^{xvi}

Whereas the situation is different in Ireland as there the abortion Act of 1967 is not applicable. And the matter of abortion is dealt under Sections 58 and 59 of the Offences against the Person Act 1861 and under Sections 25 and 26 of the Criminal Justice Act (Northern Ireland) 1945, (which do obtain from the corresponding provisions of the Infant Life (Preservation) Act 1929). An offense under Section 58 is punishable with imprisonment for life or any shorter term.

In the USA, women in the United States haven't ever held that right to an abortion. Since 1973, individual states were allowed to decide whether abortion would be legal within their borders. It was a landmark decision; the U.S. Supreme Court ruled that the right to an abortion remained part of a woman's right to privacy. Federal law has protected a woman's right to choose an abortion since the U.S. Supreme Court's Roe v. Wade decision in 1973.

Analysis: - No doubt early on most of the countries has changed the condition of abortion in their laws. But still, it would be important here to tell that besides the liberalization of the law the woman still do not have the full/ total control over their reproductive future as still there are many lacunas in the laws of many countries like in case of India-

"It is provided in MTP Act in Section 3 (2) that a married woman in the event of failure of the contraceptives can go for a legal abortion. While on the other hand there are many instances where the unmarried woman also gets pregnant either due to contraceptives failure or due to non-use of the contraceptives as not all the sexual encounters are planned or consensual."

Thus stills laws need to be more liberal in order grant complete control to a woman over her body, and this might last done by harmonizing the right of a female with an unborn foetus like was done by the U.S Supreme Court in Roe case. As unsafe abortion is the third largest cause of maternal deaths in India and constitutes to eight percent of maternal mortality despite being preventable, each day, ten women die on account of unsafe abortions.^{xvii}

Jurisprudential Analysis:

"No female can call herself free till she can choose voluntarily, whether she will or will not be mother"- Margaret Sanger

Morality becomes hypocrisy if it means accepting mother suffering or dying in connection with unwanted pregnancies, illegal abortion and unwanted children living in misery.^{xviii} As now we have entered into the modern era of civilization. Wherever with the foundation of the globalization and LPG, in almost every sector of the world have led the woman's to participate in the all the area equally. Now woman's are on equal footing with men's in every area like defense, politics, health, education, bureaucrats, entrepreneurs, etc. and they are all contributing best their role in the progress and development of the countries in today's global era. So in such type of situations causing a burden of unwanted pregnancies upon them create a hurdle to their personal liberty which can also affect their career and personal life both and also put them on an unequal footing with men's. No doubt, our society is still very much traditional which tends to take a foetus even of a single day to be a life and gift of God and have fear in them. That this would be a sin to abort it, but still we have to adopt a way to provide liberty to a woman to choose and to have the complete right to her reproductive future.

We have to adopt such measure which can harmonize the right of a woman to have control over her body and right of an unborn to live as still; our society is traditional. So, this can continue by employing the principle of social engineering as given by Roscoe Pound^{xix} The interest of a woman and an unborn child both can be harmonized as was done by the U.S Supreme Court in *Roe v. Wade*. In which the court has recognized the interest of a mother by allowing abortion on demand up to 12 weeks. And it also knew the benefit of the unborn foetus by prohibiting abortion on demand after embryo attains the stages of viability. Thus, the same principle can lastly apply to other countries laws also so that both the mother's and interest of unborn would stay protected. Secondly, then no woman shall be deprived of the right to better health services.

While by the principle of the utility also if we will see. Then the unwanted pregnancies cause so much pain upon a mother like an economic problem, nursing and caring for a child, social pressure if unmarried woman, hurdle in her career, suffering from mental trauma, etc. Thus, it becomes right for a woman to abort to promote happiness, yet, slight might be, and J. Bentham had also recognized the right of a woman to abort by the principle of the utility. Might be this situation may be not the same in the case of a married woman where the people other than that woman might feel pain by the act of abortion by a woman. In such situation the degree and the quantity of pain may increase in comparison to the happiness of that woman but, such type situation might be occurring exceptionally. Thus, by utility woman shall have the right to abort?

The Well-Known Decision of *Roe v. Wade* (1973):

Roe v. Wade became one of the most politically significant Supreme Court decisions in history. In reshaping national politics, dividing the nation into "pro-choice" and "pro-life" camps, and inspiring grassroots activism. That is a landmark judgment by the United States Supreme Court for setting that most laws are violative to the abortion under the constitutional right to privacy of the individual. Thus, reversing all state laws outlawing or restricting abortion which were incompatible with the judgment. Jones Roe, the plaintiff, wanted to terminate her pregnancy as she disputed that it seemed because of the event of rape. Depending on the current status of medical knowledge and the decision built a practice of trimesters. That tried to set the state's legal interests of the individual's with their constitutional rights. The Court directed that the state could not limit a woman's right to abortion as the first trimester. The state can control the abortion method during the second trimester "in ways that are reasonably related to maternal health," and in the third trimester, demarcating the viability of the foetus, a state can choose to reduce or even to proscribe abortion as it sees fit.^{xx}

In reply to *Roe v. Wade*, several states enacted laws limiting abortion. Including laws requiring parental consent for minors to obtain abortions, parental notification laws, spousal consent laws, spousal notification laws, and the law's requiring abortions to get done in hospitals. But the law is banning mostly very late term abortions, and no clinics, laws preventing state funding for abortions. The Supreme Court struck down many state constraints on abortions in a great series of cases extending from the mid-1970s to the late 1980s.^{xxi}

In the Supreme Court of Canada, while interpreting Article 7 of the Canadian Charter ensures an individual's right to life, liberty and freedom and security of a person. In the leading case of "*Morgentaler Smoling and Scott v. R (1988) 44 DLR (4th) 385*", the Court focused on the human safety of the pregnant women. The Criminal Code of the country required a pregnant woman who wanted an abortion to submit an application to a therapeutic committee, which ended in delays. The Supreme Court found that this method violated the promise of security of a person. That ruled the pregnant female to mental stress. Also, the Abortion Act, 1967 of the UK in its Article 2 does not confer an absolute right to life to the unborn. It did hold in "*Paton v. the United Kingdom (1980) 3 EHRR 408*". Abortion is permitted if the continuance of the pregnancy involves risk. The right to life of a foetus is subject to an implied limitation allowing the pregnancy to be terminated to protect the life of a mother. The same did prove in "*H v. Norway ((1992) 73 DR 155)*". Moreover, it was also held in 1992 by the Supreme Court that a woman begets the same independent right to abortion as to any to any other medical treatment. The prospective fathers have no right to be consulted for the same.^{xxii}

Conclusion/ Suggestion:

Abortion in modern society has become the controversial issue due to the difference of opinion between the pro-choice & pro-life group. Abortion is the ending of a pregnancy by removing a foetus or embryo before it can survive outside the uterus.^{xxiii} The present laws of various countries have no doubt liberalized the abortion in particular circumstance only. But this has not fulfilled the purpose of providing absolute right over woman body as there is still lacunas in those laws due to which many women live further demoted from better health service rights which are a fundamental right under Right to life and personal liberty. Abortion will always be a necessary component of comprehensive sexual health care.

The lack of autonomy, failure to enforce laws in women's favor. The discrimination in laws such as the criminalisation of abortion, inadequate allocation of health resources and failure by government to implement remedial measure sanctioned by international agreement, all contributes to their poor health status in many societies.

The International conference on population and development, 1994 held in Cairo views that the access to health services is a human right. The women, in particular, have the right to control their fertility and to have the greatest reasonable measures of primary health care. That view was further underlined and strengthened at the Five-year review of the Cairo conference in 1999.^{xxiv}The enormous impact of gender inequality remains illustrated by the estimated 5, 86,000 maternal deaths in each year, many of them are as the result of unsafe abortion.^{xxv}For poor women who often lack support from their partners and social services, pregnancy is an additional burden. An adolescent and adult woman faces barriers to fertility law including restricted access to information and services. In most countries, women remain primarily valued as mothers. The interruption of pregnancy does civilly censure. The gender discrimination is a determining factor in legal, political and religious barriers to women's access to safe abortion. Unsafe abortion remains to be a major public health problem, causing widespread damage to women's physical and mental health, women with low income, rural areas women, young women and adolescent girls are particularly vulnerable to these risks.

To change traditional male outlook towards women's, the male should be socialized to treat women's as equal at an early age. Sex education for boys and girls should be provided as in the case of environmental education to reduce the incidence of unwanted pregnancies, unsafe abortion, and STD's (sexual transmission diseases). Quality sexual and reproductive health information and services, including emergency contraceptives should be made accessible and acceptable.

All adolescents should have access to sexual and reproductive health education right starting from the age of their puberty both male & female; they should also have access to confidential rather than judgemental sexual and reproductive health services. Government and the international communities should ensure the implementation of the Beijing platform^{xxvi}for action on the problem of unsafe abortion. Government and legislature should address the reality and consequences of unsafe abortion. By revising and modifying laws and policies which perpetuate damage to women's health, loss of life and violation of gender as well same sex (unmarried woman shall also have autonomy to deserve a medical right) equality in health care. Thus, in our opinion abortion should be provided till 12 weeks to every woman on demand and in the safe and healthy environment at the expense of government. And after that it to be given under the exceptions cases as the unwanted are desired and intended to stay ended within 12 weeks and until that period the viability of the child is also not there. Whereas as the existing laws of many countries, except U.K, Japan & U.S (some states only) like that of India, Malaysia, Thailand, etc. Though here the law is little bit liberalized and which permits abortion under the certain exception circumstances. But it does not provide abortion on demand up to 12 weeks. If they are not providing abortion on demand then why they are providing it only in certain exception conditions? Only it should be restricted in that cases also in "*R v. Dudley*" case it was said by the English court that "*self-preservation cannot be justified to take the life of others*" and permitting in certain circumstances it is promoting self-preservation right over taking the life of other.

Notes and References:

- ⁱ Niranjna, "Medical Termination of Pregnancy- the causes conditions and the emerging issues"; Guru Nanak Journal of Sociology, Vol. 22, No. 2 Oct 2001, p.113.
- ⁱⁱ Natasha Thomsen "Global issues- women's right's", Pub. Viva Books, First Indian Ed. 2010, p. 16.
- ⁱⁱⁱ P.M. Bakshi and Gunjan Shah, "abortion- social, ethical & legal Issues, Monograph 3", the institute of law, ethics and medicine NLSIU, Bangalore, 1999, p. 5
- ^{iv} Subhash Chandra Singh, "Right to an Abortion: A new Agenda", AIR Journal, 1997, p. 132.
- ^v Merriam-Webster online Dictionary is available at <https://www.merriam-webster.com/dictionary/abortion> as visited on 24-4-2017.
- ^{vi} Abortion, "Harvard health Publication", available at <http://www.health.harvard.edu/womens-health/abortion-termination-of-pregnancy-> as visited on 24-4-2017.
- ^{vii} The code of Hammurabi, sec. 209-212 available at <http://Gutenberg.org/files/17150/17150-4/17150-h.htm> as visited on 2-4-2017
- ^{viii} Constantin- Julian Damian, "abortion from the perspective of Eastern religious: Hinduism and Buddhism," Romanian Journal of Bioethics. Vol. 8, No. 1, Jan- March, 2010 available at http://eng.biotica.ro/atdoc/RRBV_8n1-2010 Damian-en, p. 6
- ^{ix} Ibid.
- ^x Code of Assura online source Available at <http://sourcebooks.fordham.edu/halsall/ancient/1075assyriancode.asp> as visited on 24-4-2017
- ^{xi} 1982, 2 AER 771 at 781
- ^{xii} A.K. Jain, " Jurisprudence and legal theory", Ascent publication, 2015, p. 54
- ^{xiii} Richard Griffith, Cassam Tengnah, Chantal Patel, "Law and Professional Issues in Midwifery", E-Book available at <https://books.google.co.in/books?id=loxEDgAAQBAJ&pg=PA202&lpg=PA202&dq=paton+v+british+pregnancy+advisory+service+trustees+legal+status>
- ^{xiv} Paras Diwan and Peeyushi Diwan, "woman and legal protection", Deep and Deep Publication, New Delhi, 1994, p. 58
- ^{xv} <https://indiankanoon.org/doc/1836566/>
- ^{xvi} https://en.wikipedia.org/wiki/Abortion_in_the_United_Kingdom#cite_note-1
- ^{xvii} Nrhm.gov.in/images/pdf/programmes/maternal/health/guidelines/MMA-handbook. Pdf, p. 5 as visited on 25.03.2017
- ^{xviii} Jennifer Griffin, "empower women to curb baby boom", Hindustan Times, 7th September 1994, p. 7
- ^{xix} "Law is a social engineering which means a balance between the competing interests in society," in that applied science do use for resolving individual and social problems.
- ^{xx} Manisha Garg, "Right to abortion", online source available at http://www.legalserviceindia.com/articles/adp_tion.htm
- ^{xxi} Ibid.
- ^{xxii} Ibid.
- ^{xxiii} Grime, D.A, Stuart, G (2010). "Abortion Jabberwocky: the need for better terminology" contraception. 81 (2): 93-6. Doi- 10.10.16.
- ^{xxiv} Ashine Ray "Woman in power and decisions was making", Rajat Publications, first ed. 2003, p. 47
- ^{xxv} Ibid.
- ^{xxvi} Ibid.