

CRIMINALIZATION OF ABORTION

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ABSTRACT

This paper discusses about abortion and its criminalization. From centuries, there have been debates on the issue of abortion. This paper critically outlaws the idea of abortion from all legal aspects. Under the whole socio-economic and legal paradigms, abortion is the most complication subject matter. Both legal and socio-economic perceptions differ variably causing a gap in what is presumed by the people and what is presumed by the law. This paper looks at abortion as a crime and backs its arguments on the basis of sex-selective abortion, rights of the fetus, jurisprudential, socio-economic and constitutional factors, difference between harm to the mothers' reproductive health and harm as to death, the mental agony faced by the mother and why the practice of the same must be punishable. Finally, this paper mentions adoption as an alternative to abortion. However, it must be noted that under no circumstances does this paper promote absolute criminalization of abortion, it has not undermined factors such as rape or incest or the mental and physical condition of the mother. These however would fall under a separate category. This paper largely focuses on abortion of those healthy fetuses that have been deprived of life.

INTRODUCTION

Abortion: The deliberate termination of a human pregnancy, most often performed during the first 28 weeks.¹

What are the reasons for Abortion?

- 1) Forgetting to use contraceptives like birth control pills or defect in those pills or not appropriately taking those pills
- 2) Inability of the mother of support the child, financially or socially.
- 3) Ambitions before settling down.
- 4) Abnormality of the child or severe medical problems.
- 5) Rape or incest
- 6) Threat to mother's life.

The historically continuous debate on abortion being constitutional or unconstitutional has given rise to many countries legalizing or non-legalizing the same. Because of such conflicting views, there hasn't been any proper international law nor has any treaty been establish addressing this issue. This matter has been allowed to remain as a discretion for each country.

THE LEGAL STATUS OF ABORTION IN DIFFERENT COUNTRIES

INDIA

Sections 314,315 and 316 of the Indian Penal Code, punish anyone who tries to prevent birth or cause death of the child with maximum ten years imprisonment plus fine.

These sections were enforced simply for the reason, no unnecessary abortions are practiced one on healthy fetuses and second on female fetuses. There have been a number of cases of forceful abortions in order to escape shaming in the society, dowry concerns etc.

One such case was *Manjeet Singh v. State of Haryana, 11 December, 2014*

¹ *Oxford English Dictionary*. Oxford University Press. Retrieved 12 December 2014.

The victim, a girl, was sexually assaulted at her uncle's place where she went to do his household chores. During this period she was mentally harassed and tortured due to which she did not inform her parents whenever they came to visit her. She then conceived and the baby was born a premature. The uncle took away the child (which was then living) and tried to cremate it. Although he was caught and convicted under section 315 of the Indian Penal Code.

In Kishan Singh & Anr vs State Of Punjab on 12 October, 2007

The victim was married to an Army officer whose family including him demanded dowry even after receiving the same at the time of the wedding. In this case, the family of the husband, when he was on duty someplace else, forced her to abort the child unless her family paid dowry. They ended up killing the woman.

These are just some of the cases, but historically, women have been oppressed and made to undergo multiple abortions for various issues.

It can be observed here, the hypocritical psychology of the people of India. On one hand they emphasize reading of holy scriptures-be it Hindu, Islam, Christianity, Sikhism or Buddhism-but stay quiet ignorant to the fact that these scriptures themselves state abortion to be evil, bad karma, sin and murder.

USA

The debate over abortion and contraception continues to this day. However, unlike the United States, there are some counties where abortion is illegal. The single decision of seven, non-elected justices has defined federal abortion policy in the United States. It was a decision explicitly defended on the basis of ignorance, under the claim that "no one knows when life begins." Just as how slavery was legal in 1800, in the modern times, abortions have become legal here as well. The history of abortion in the US is far more complicated than most people imagine. It has been an issue of varying contention for more than 200 years. Nevertheless, abortion has never enjoyed such universal protection under the law as it has since 1973. In the US, abortion was legalized with the landmark judgment or Roe v. Wade 1973 in which the Supreme Court stated that right to privacy included right to abortion as well.

However, South Dakota on Thursday became the latest state to pass a pain-capable abortion ban, when Republican Gov. Dennis Daugaard signed a bill into law prohibiting abortions after 20 weeks.

The legislation penalizes doctors who perform or attempt to perform such abortions in non-emergency situations. Violators would be subject to penalties of up to a year in jail, a \$2,000 fine, or both, according to the Argus Leader.

Debbie Pease, a lobbyist for South Dakota Right to Life had said that it was going to save the lives of babies by decreasing the number of abortions.² Restrictions on Abortion were legalized with effect from April 1, 2017. They were

- Abortion would be banned if Roe v. Wade were to be overturned.
- A woman must receive state-directed counseling that includes information designed to discourage her from having an abortion, and then wait 72 hours before the procedure is provided, thereby necessitating two trips to the facility. The 72 hour waiting period does not include weekends or annual holidays.
- Health plans offered in the state's health exchange under the Affordable Care Act can only cover abortion if the woman's life is endangered or her health is severely compromised.
- The use of telemedicine to administer medication abortion is prohibited.
- The parent of a minor must be notified before an abortion is provided.
- Public funding is available for abortion only in cases of life endangerment.
- An abortion may be performed at 20 or more weeks postfertilization (22 weeks after the woman's last menstrual period) only if the woman's life is endangered or if her physical health is severely compromised. This law is based on the assertion, which is inconsistent with scientific evidence and has been rejected by the medical community, that a fetus can feel pain at that point in pregnancy.³

² Bradford Richardson - The Washington Times - Friday, March 11, 2016

³ Guttmacher Institute, State Facts about Abortion, January 2017

Restrictions of much similar nature have been found in many other places of the United States such as Nevada, Illinois, Wyoming etc. this just goes on to show how states have overturned the Roe vs Wade judgment, considering Abortion to be a wrong practice.

IRELAND

Counselling abortion is against the law in Ireland unless the pregnancy endangers the life of the woman. If you decide to terminate your pregnancy, you will have to travel to another country to have access to safe and legal abortion services.

Legally the IFPA can provide you with information on abortion services abroad in a face-to-face counselling session. It is not legal to provide this information over the telephone.

Abortion in Irish law

Abortion is legal in Ireland only when a pregnant woman's life is at risk. This includes the risk of suicide. Access to abortion in such cases is governed by the prediction of life during Pregnancy Act 2013. The department of health has issued guidelines for health professionals on the implementation of the Act. Abortion is not illegal in Ireland in cases of rape, incest or fetal anomaly. Abortion is also criminalized in most circumstances in Northern Ireland.

There are some pregnancy counselling services whose sole purpose is to prevent women from having abortions. They misinform and intimidate women to achieve their aim. Every year an estimated 5,000 women travel abroad to access safe and legal abortion services.⁴

PENNSYLVANIA

The Abortion Control Act says that every woman must be provided with mandatory state-prepared information by a physician at least 24 hours before her abortion.

Counselling is offered on phone under Pennsylvania's 24 hour waiting period law. The law says that one of your parents or a legal guardian must sign a consent form if you want to have an abortion, unless you are married or emancipated. This is called "parental consent". If you cannot involve the then law does give you an alternative called a "Judicial Bypass", which means having a hearing with a judge at the Juvenile Court.⁵

⁴ IFPA, Pregnancy and Counselling, Abortion and Irish Law.

⁵ Pennsylvani Pro-Life Federation, *The Law on Abortion in Pennsylvania*.

SOUTH KOREA

In South Korea, abortions are illegal. Although, they are not a rare occurrence. For several reasons, legalizing abortion in South Korea has recently been a topic of great debate. Korean women have expressed their desire to legalize abortion, yet the government, the social expectations of women and some groups in the medical community hinder them from having this right to choose and being in charge of their own reproductive capability.⁶

In 1953, Korean Criminal Code made abortions illegal. In 1973, the Maternal and Child Health Act allowed doctors to perform abortions within the first 28 weeks of pregnancy in cases of rape or incest, when the woman's health is in danger or her spouse has communicable or hereditary diseases. In 2009, the Abortion Law was revised and the deadline for a legal abortion was reduced from 28 to 24 weeks. If a woman gets an illegal abortion, she could be imprisoned for a year with about \$2000 fine. A physician who performs illegal abortion gets imprisoned for two years, if the woman was harmed, it exceeds to three years and in case she dies, it further extends to five years. South Korea is thought to have one of the highest abortion rates in the world. This is due to the stigma attached on these women on taking oral contraceptive pills⁷

WHY SHOULD ABORTION BE CRIMINALIZED?

There are multiple reasons and landmark judgments passed by supreme courts of various countries that have held abortion to be a crime, an equivalent to murder.

THE SEVEN MAJOR REASONS FOR CRIMINALIZING ABORTION ARE:

1) SEX-SELECTIVE ABORTIONS

DEFINITION OF SEX-SELECTIVE ABORTION:

It refers to a situation in which, a pregnant woman terminates the fetus solely on the predicted sex of the fetus.

⁶ Jane Kang, *To Abort or Not to Abort: That is the Question in South Korea*, 2013/10/14

⁷ Jane Kang, *To Abort or Not to Abort: That is the Question in South Korea*, 2013/10/14

With the advent of prenatal diagnosis that enable us to determine the sex of the child, the number of female abortions have drastically increased in these countries due to a large preference for sons.

CHINA

In China, in 2005, the number of males across the country exceeded over 1.1 billion than the females and the population of boys aged 20 itself exceeded 32 million over females.⁸

94% of males will remain unmarried from age 20 to 49. This gives rise to many psychological issues and increased number of crime and violence due a large proportion of males in China.

INDIA

In India, the disparity is similar with 125 males per 100 females in Punjab, Delhi and Gujarat. Sex-selective abortions happen mainly due to excessive preference for sons in patriarchal families. There has been continuous violence on women for not bearing sons and due to technological development in determining the sex of the child, the moment the family is made known about the sex, if it happens to be a girl, she is aborted.

Due to enormous pressure on the women to bear male child drives them to abort a female fetus as soon as it is notified. There was an amendment brought to the Serious Crime Bill by MP Fiona Bruce to outlaw sex-selective abortions. However, this amendment received a lot of criticisms and finally the House of Commons rejected the amendment.

Pennsylvania has prohibited sex-selective abortions despite which such practices continue to take place.

2) THE SOCIO-ECONOMIC EFFECTS:

Socio-Economic Beliefs and Views on Abortion

Hinduism on Abortion:

It must be noted that abortion was considered a great sin from the time of the Vedas. The Rig and Atharva Veda emphasize the protection of fetus considering it to be a living person who

⁸ Canadian Medical Association Journal. "The impact of sex selection and abortion in China, India and South Korea." ScienceDaily. ScienceDaily, 15 March 2011.

deserves protection. Across the board, Hindu religious leaders perceive abortion at any stage of fetal development as killing (some say murder)...and as an act that has serious karmic repercussions." For example, Swami Kamalatmananda of the Ramakrishna Monastery in Madras, India, has said: "No human being has the right to destroy the fetus. If having a baby is economically and socially problematic, one can very well take precautions to avoid such unwanted birth rather than killing the baby. Precaution is better than destruction."⁹

Mohandas Karamchand Gandhi himself considered abortion to be a crime. For instance, when counseling a young man whose unfaithful wife has become pregnant, he stated that it is clear as daylight that abortion would be a crime, and that it is the sacred duty of the husband to bring up the baby with all the love and tenderness that he is capable of and to refuse to yield to the counsels of [those who recommend abortion].¹⁰

Christianity on Abortion:

Since the legalization of abortions in the 1973 landmark judgment of Roe v. Wade, around 57 million¹¹ abortions have happened. Abortion is legal just as much as slavery was in 1800's. but the question here is whether it is morally a right thing to do?

The bible makes no mention of abortion specifically that a child must never be aborted, neither does it make any mention of suicide, infanticide or same-sex marriages to be wrong. Yet, the bible teaches us that these things are wrong. It does not take some intelligent person to conclude that the Bible forbids abortion. The Bible forbids killing of innocent persons. If an unborn child is a person, then abortion is forbidden. Although, the Bible uses words like "born" or "unborn baby" stating that the child is a person that goes through the same kind of growth and development inside the womb as it does by birth.

From a Christian view, deliberate abortion is murder. Despite it being legalized in some parts of the world, it is killing of the most defenseless living beings.

⁹ Vasu Murti and MaryKrane Derr, ABORTION IS BAD KARMA: HINDU PERSPECTIVE.

¹⁰ Daniel Vitz, GANDHI: WHAT HE BELIEVED ABOUT SEX, MARRIAGE AND BIRTH CONTROL, 27/03/2008.

¹¹ Steven Ertelt, Abortions in America Since Roe vs. Wade in 1973, 21/1/15

Buddhism on Abortion:

Buddhists have little to say on abortion but wherever this subject has been touched upon, it is seen as killing. The Vinaya monastic code specifically forbids monks and nuns to perform abortion.¹²

This religion believes in the concept of rebirth. It believes that life begins at conception. The new being, bearing the karmic identity of a recently deceased is entitled to the same moral respect as an adult human being.¹³

Islam on Abortion:

The Qur'an condemns the killing of humans but it does not explicitly mention abortion. This lead to the scholars coming up with their own viewpoints and contentions about the same.

Although there is no actual approval of abortion in the world of Islam, there is no strict, unanimous ban on it, either¹⁴. Schools like Surah 17:31 and Surah, Al An'am, 6:151 encourage one to not kill children just because of want or poverty. However, this reference was made for already born children condemned to death (usually girls). Scholars are also of the opinion that women can be allowed to prevent pregnancy but not terminate it. With the advent of technology like ultra sound scan and prenatal diagnosis, it has become possible to attain the sex and health status of the child at an earlier stage of pregnancy. If the woman has been raped, she must take the morning after pill or RU486 immediately after the sexual assault in order to avoid implantation of a fertilized ovum.¹⁵

Societies, that generally are religious and believers in God, have already justified abortion to be equivalent to murder. But the negative economic and social factors that abortion brings along are crime.

In China, seeing the enormous growth of male population in relation to the females, in a decade there will be an extensive proportion of males of around 20-30 and that will lead to more

¹² Vishvapani, Buddhism and Abortion, 21/2/15

¹³ Buddhism:Abortion, Nov 23,2009

¹⁴ Ibrahim B. Syed, Abortion, Islamic Research Foundation International, Inc.

¹⁵ Ibrahim B. Syed, *Abortion in Islam*.

criminal activity, intercaste/ interclass marriages and worst, the proportion of family will decline due to absence of women.

The case in India is not much different. Poverty has driven families to abort female infants in order to escape from paying dowry.

Because of these repercussions, it is very much important to ban all sorts of sex-selective abortion.

More importantly, aborting effects the health of the women both mentally and physically.

Once a woman goes under abortion she experiences mental trauma, agony and distress and studies have shown them to be true because even they understand that they have killed a child. If we criminalize it then women won't have to go through it anymore. The person who aborts will be punished and so unnecessary abortions can be reduced.

Certain health effects that can occur are:

- 1) Guilt
- 2) Depression
- 3) Flashbacks of abortion
- 4) Eating disorders
- 5) Alcohol and drug abuse
- 6) Suicidal thoughts
- 7) Sexual dysfunction
- 8) Relationship problems

All of these can be avoided if we simply criminalize abortion. Also, criminalizing abortion is not going to go against any religion as seen above, they themselves have considered abortion as an evil and equated it with murder.

Legalizing abortions have made access to abortions easier but not safer. In India, every two hours, a woman dies of unsafe abortion. A lancet paper in 2007 stated that 6 million abortions take place in India and out of these more than 50% of them are unsafe. Criminalizing this practice will automatically better the health of woman.

Think in this manner, if abortion is absent in a country, then the proportion of males and females will automatically become proportionate. Women population will improve and grow,

crime would be less and such societal stigmatization on women will gradually end. The moment you allow people to tamper with birth, you automatically create disparity between the proportion of males and females.

3) IS THERE A DIFFERENCE BETWEEN ABORTION AS HARM TO THE REPRODUCTIVE HEALTH OF THE MOTHER OR ABORTION AS HARM TO THE LIFE OF THE MOTHER:

Abortion can be allowed in cases where a mother's life is in danger. Life in danger would be defined in such a manner that had the mother been allowed to abort, she would die. On the other hand if by abortion only the mother's reproductive health is harmed, then there is no need for abortion. The contention here is to only protect those mothers whose lives are at stake if abortion is not performed. A mother however, must not be allowed to perform the same if only her reproductive health is in danger.

What happened in Ireland is truly horrible. This is not a kind of situation that this paper is promoting. Mother's life can be the only exception to allowing abortion.

4) JURISPRUDENTIAL ASPECT OF ABORTION:

Natural Law Thinkers on Abortion:

JOHN FINNIS

In his noble work, Finnis had laid down seven basic goods that are absolute in nature and cannot be disobeyed. Finnis considered LIFE to be the most important basic good among those seven. Once the mother has conceived, it becomes her moral duty to give it birth. Otherwise she would be considered as a sinner.

ZENO

You apply reason whenever you do any activity. God has bestowed upon us reason. When we leave out all our worldly affairs, wealth, we get what is called true reasoning. And this true reasoning does not allow us to kill a child.

KANT

Kant talks about moral duty. In his four categorical imperatives, he stated that we should always do the right thing and avoid doing the bad thing just because it is wrong thing to do. So giving birth is a duty given by God to a woman and when she aborts it she is disobeying her duties. So it must be punishable.

THE LEGAL STATUS OF AN UNBORN CHILD

When a mother is conceiving and the father's ancestral property is getting divided, then the unborn fetus is also included in the share. So for ownership purpose if the unborn is getting a legal share and is considered as a legal person, then aborting the unborn child would amount to murder and must be punishable.

THE ABORTION AND STEM CELL DEBATES

Some people believe that abortion should be banned because it involves the taking of innocent human lives. If the developing fetus is morally equivalent to a child, then abortion is morally equivalent to infanticide. For affirming the right to abortion, neutrality and freedom of choice aren't sufficient grounds. The embryonic stem cell research was banned solely on the grounds that any kind of research that involves destruction of human embryos is not morally permissible. Most of these people believe that life starts at conception so destroying even an early embryo is morally at par with killing a child¹⁶

5) AN ALTERNATIVE PROPOSAL:

ADOPTION

The main reason why abortion needs to be criminalized is that adoption can be an option.

If you wish to abort because you cannot support the child or it has been a case of rape or incest, then you can give the baby up for adoption. No child born to a rapist is going to turn out to be rapist too. A child grows to become what he/she is taught and how he/she is loved. There are many couple who may not be blessed with children and they look upon orphanages as their

¹⁶ Michael J. Sandel, *Justice: What's the right thing to do*, penguin books,pg 251-253

main hope. So instead of aborting, bearing the child and giving it up for abortion can be an alternative option.

CONCLUSION

Life is the most precious and most cherish able thing. We all consider our lives as precious. When we are in danger, we tend to look at our lives first. But the child inside a mother cannot defend itself. The child depends on the mother to defend it. It cannot speak for itself. So taking a stand on abortion is merely a mother's choice or her family's. So it must be regarded as a crime against an innocent being.

If we penalize abortion, it does not mean abortions will increase or decrease suddenly. But the most important factor that would decline, is the sex-selective abortion and forceful killing of the child due to societal shame or family pressure. Moreover, such crimes against women would become punishable and hence stopped.

It is not neglected that under strict abortion laws, women will try to practice self-induced abortions or try illegal abortion services that may result in aggressive health hazards for women and nor are all legal abortion services safe. In countries like India, El Salvadore and even the United States where they allow abortion, it is never guaranteed that the procedure would always be safe. So, in the end it is only right that we do not encourage unnecessary abortion and take a step further in saving a life.

Life is life whether inside or outside the womb and therefore it cannot be allowed to be aborted or killed at any stage of life.