

## THE BATTLE CONTINUES: ABORTION LAWS V. HUMAN RIGHTS LAWS

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### ABSTRACT

India spearheaded in legalizing abortion (Medicinal Termination of Pregnancy (MTP) Act of 1971) under which a lady can lawfully profit from abortion if the pregnancy conveys the danger of grave physical damage, jeopardizes her psychological well-being, when pregnancy comes about because of a preventative failure in a married lady or from rape or is probably going to bring about the birth of a child with physical or mental irregularities. Abortion is allowed up to 20 weeks of pregnancy duration and no spousal assent is required. According to the Ministry of Health and Family Welfare, in 2013-2014 about 6.6 lakh MTPs were performed in the country (MOHFW, 2014). Against that, an estimated 16.7 million abortions per year are performed in other than registered and government recognised institutions, often by untrained persons in unhygienic conditions (Leela Visaria, 2014)

Despite an intensive national campaign for safe motherhood and after the initial attention on unsafe abortion in the 1960s and early 1970s that led to legalization of abortion, morbidity and mortality from unsafe abortion have remained is a serious problem for Indian women 28 years after abortion was legalised in India (Department of Economic and Social Affairs, 2002)

In the last decade, women health advocates have tried to draw the attention of policy makers and administrators to a range of issues and concerns related to abortion in order to improve the availability, safety and use of services. In the post Cairo period, the comprehensive Reproductive and Child Health (RCH) programme initiated in India, has included abortion in the RCH package and work towards making it safe (Pati, 2004). While the climate seems to be favourable to initiate debate on safe abortion among key stakeholders, lack of reliable

information, wide regional and rural-urban differences, inability to bring various constituencies on a common platform and a thin research base, make it difficult for policy makers, administrators and women health advocates to develop strategic interventions.

## INTRODUCTION

“I have still not come into this world o mother; will you destroy me or let me see this beautiful world?”- The voice of an unborn clearly indicates how not just woman’s life and legal rights are attached to the fetus inside her, but also her emotions are. This has always been a debatable issue as to what needs to be given priority- morals, her rights or her emotions.

An abortion or termination of pregnancy is to end a pregnancy resulting in no giving birth to a baby. Public discussion on abortion has come to think about fetal life over female life<sup>1</sup>. The right to abortion is to determine when and if to become a parent, is an issue of human rights. The primary objective of human rights is to work for ensuring that basic human rights are respected everywhere. It keeps a check on government not discriminating on the basis of sex, creed and economic status in order to put an impact on people’s health. <sup>2</sup> Human Rights Organization promotes abortion in the name of human rights and so support and care for unborn.<sup>3</sup> The rights to make decision on one’s reproductive health are safeguard by this right in welfare of society.

Abortion, like all matters related to sex, is a taboo. Many pregnant women abort their unborn child as soon as they find out it is a girl. This often becomes a reason of misuse of rights avail in the society. In the past clinics that can determine the sex of a baby through ultrasound examinations have emerged. Some of them offer package prices for tests and immediate abortions if they discover in that test that the baby is a girl.<sup>4</sup> Abortion is a day-care procedure. Practically, one week of proper rest is enough for the patient if has done

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<sup>1</sup>Cecile Richards, *We need to talk-Really Talk about Abortion*, TIME, (Jun 20, 2017, 12:35 pm) <http://time.com/3838489/cecile-richards-celebrities-talk-about-abortion>

<sup>2</sup> IPAS, (Jun 20, 2017, 12:35 pm) <http://www.ipas.org/~/>

<sup>3</sup> LIFESITE (Jun 20, 2017, 12:35 pm) <https://www.lifesitenews.com/>

without complication cases. And as per Government rules, a woman undergoing abortion can get a leave of 6 weeks.

Abortion is a woman's right to choose. There is no disgrace in doing it if the woman feels that she is not emotionally or monetarily ready to deal with the duty of a kid. Abortion is every woman's right, may be rich or poor, married or unmarried and it is a decision which she alone can make in the society. Therefore, we should regard the woman as a person and not just as a container for the fetus. We should give enough consideration to her rights as well as those of the unborn.<sup>5</sup>

### **MORAL V/S LEGAL SCENARIO OF ABORTION**

Abortion is a social anathema and is always considered morally wrong. The issue revolves around the question whether terminating pregnancy before a nominal child birth is allowed morally and ethically? Abortion is one of the most controversial social issues in the world today because it involves the taking of an unborn child's life. Considering it from the ethical point of view- ethics is pertaining to or dealing with morals or the principles of morality; pertaining to right and wrong in conduct.<sup>6</sup>What good and bad is involved – and after determining both by quality and quantity then, it seems that an early embryo must be considered greatly inferior to a late-term fetus, and both would have to be considered of less 'value' than a fully sentient adult human. Thus, that no moral wrong is done by killing an early fetus as at the beginning of a pregnancy the zygote, having no capacity for suffering, cannot be held to be of much importance compared to the mother.

Destroying any life is undesirable, but it is impossible to rationally argue that destroying an early-term fetus, in itself, is worse than destroying any creature; in fact, the animal, being sentient and capable of suffering, should be held to be more deserving of compassion than the fetus. The death of a fetus is of much less concern than the death of a person; the fetus which

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<sup>5</sup> *Arguments in favour of abortion*, BBC,( Jun 20, 2017, 12:35 pm) available at [http://www.bbc.co.uk/ethics/abortion/mother/for\\_1.shtml](http://www.bbc.co.uk/ethics/abortion/mother/for_1.shtml)

has not even developed the characteristics of personhood. It seems that to kill a non-sentient fetus is no more immoral than to kill a non-sentient animal.

A late-term abortion is a different matter. The fetus may be beginning to develop the early stages of sentience, is capable of suffering and we need to consider the greater trauma to the mother and to the clinic or hospital staff where the abortion is carried out. Here more consideration needs to be given to the balance of good and bad likely to be achieved.<sup>7</sup>

In nearly every country, abortion is legal in some circumstances only. In any case, no abortion law independent from anything else can guarantee that a woman can securely terminate a pregnancy that is undesirable, harming to her well-being or risky to her life. The health of these women, and even their lives, can depend on their ability to have access to safe abortion services. People stating that women have a right to an abortion use different arguments. They are unable to speak for themselves with these facts

**1. *“It’s not a baby or a person — it’s just a blob of tissue.”***

**Response:** The baby living in her mother is as distinct and unique a new human being. The baby every mother carries has a beating heart at 18 days after fertilization and brain waves as early as six weeks after fertilization. Majority of the abortions are not performed until nine weeks of the pregnancy. Indeed, even RU 486 chemical abortion isn't possible until following a month and a half.

**2. *“It’s my body” or “It’s a women’s choice.”***

**Response:** Each mother is confronted with significant choices to make for herself and her kid, however these choices can never incorporate the privilege to kill her child. Mothers facing difficult pregnancies require accurate information about the facts of fetal development, as well as the practical help that is available to them through the more than 3,000 mother-helping centers around the USA.

**3. *Is an unborn child part of a woman’s body?***

*“My body, my choice.”* That’s been the popular slogan of abortion supporters for decades, but is it accurate? Behind the statement it concerns only one person: the mother. But what about the baby – is he or she part of the woman’s body? Absolutely not! An unborn child's hereditary

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<sup>7</sup> *The Ethical and practical aspects of abortion*, (Jun 20, 2017, 12:35 pm) available at <http://ramblingsdc.net/Abortion.html>

code is totally special and diverse than that of the mother's hereditary code. The bone structure is different. Even the baby's gender is different from the mom if the baby is a boy.

**4. *"If abortion is made illegal, women will die in back alleys."***

**Response:** The numbers pro-abortionists regularly use to back their cases are immense creations for the most part made up by the expert abortion campaign as conceded by, organizer of NARAL (National Abortion Rights Activity Class). The genuine Dr. Bernard Nathanson quantities of deaths before 1973, when abortion was illicit, are shockingly different. Thirty-nine women have died due to illegal abortions in 1972; those are thirty-nine tragedies alongside their thirty-nine children who likewise died as a result of abortion's brutality. In fact, the main forms of abortions have changed very little since the middle of this century. The main thing that legitimizing abortion did was to give abortionists the privilege to hang their shingle on the front door and quit utilizing the back-rear way!

**5. *"What about a woman who is carrying a disabled or sick child? Or a woman who has been raped or is the victim of incest?"***

**Response:** We don't cure illness by killing the patient. When a family learns that the child they are expecting may have a special need, that family needs support and good solid medical information — not the death of their most fragile member. Society must abandon this to measure a person's worth. When a woman has been raped or a victim of incest, she has been the victim of a terrifying act of violence of which she is a true victim. The cruelest thing that can happen to the women being referred to will be to now be hollowed against her youngster, who is the second victim. The key here is support for victims, mother and child.

## **ISSUE BEHIND ABORTION AS HUMAN RIGHT LAW**

Position on abortion may be described as government's legitimate authority. Women's individual rights are of prime concern her right to life, right to liberty and to pursuit of her happiness that sanctions her right to have an abortion. Reproductive rights are the rights of individuals to decide whether to reproduce health. This may include an individual's right to



plan a family, terminate a pregnancy, use contraceptives, learn about sex education in public schools, and gain access to reproductive rights<sup>8</sup>

Abortion is nowhere mentioned in the Constitution. The supposed right to abortion, which the court found in *Roe v. Wade*, is based on? Abortion is a private decision between a woman and her doctor, abortion is a constitutionally protected right.<sup>9</sup>

These rights are international rights promoting development. Women have an absolute right to have control over her body, most often known as bodily rights. These rights protected by law allow abortion, if the continuance of pregnancy would allow a risk to the life of the pregnant women or any harm to her physical or mental health. The Supreme Court laid right to privacy in Article 21 of the Constitution keeping this in view right to abortion can be read. Right of woman is thus considered to be dependent on certain conditions: proof of risk to her life or any harm to her mentally or physically in respect with abnormalities to the child if born and a situation in which only aborting the child could save her life. Sanity and Majority will provide women with abortion decisions to be left with. Only in cases where an abortion may affect her life, her freedom may be curtailed. All other restrictions on the right to abortion are of no worth. The law is found to be volatile of the principles of equality provided under Article 14 of the Constitution and Indian statute on abortion does not pay any respect to them as there are various important factors also e.g family not financially sound, it may be that important time of changing her profession which requires time, her relationship with the husband may be on the verge of collapse and she may prefer not to have a child from him. There is no freedom, no equality, no full human dignity and personhood available to women until they move and demand control over their own bodies and reproductive process, Moreover the right to have abortion is a matter of individual will.

Earlier the right to abortion was not permitted it was opposed by the society. Article 21 of Indian Constitution provides right to life and right to privacy. Terminating the pregnancy was considered to be murder of the fetus. Whereas the most important right of a human is the right to life, it is absolute. But due to change in time and advance technology this right has been legally sanctioned by most of the nations. In the famous case *Roe Vs Wade* by the US Supreme

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<sup>8</sup> *What are reproductive rights?* FINDLAW, (Jun 20, 2017, 12:35 pm) <http://family.findlaw.com/reproductive-rights/what-are-reproductive-rights-.html>

<sup>9</sup> STANFORD STUDENT ORGANISATION, (Jun 20, 2017, 12:35 pm) available at <https://prolife.stanford.edu>

court the court held that a mother may abort her pregnancy for any reason, up until the point at which the fetus becomes viable.<sup>10</sup>

## AMENDMENTS IN INDIAN LAW ON ABORTION

Since 1971, Abortion is legal in India with the government approval of the Medical Termination of Pregnancy Act. The pivotal basis behind enactment of such act was to regularize the uncontrolled, ill methods abortion procedures which risked the life of the mother and hence to reduce the rate of illegal abortion. The act has been twice amended in 2002 and 2003 to better shape the changing moulds of the society. Basically, various conditions has been provided in the act at the arising of which, abortion procedures can be adopted and hence can be said legal.<sup>11</sup> Nominally, a pregnancy can be withdrawn by its 20<sup>th</sup> week because scientifically, a baby has not come yet into life and hence no 'fundamental Rights' have been automatically granted to it. Once the pregnancy crosses the stage of 20<sup>th</sup> week, the baby's life is assumed to be coming into existence and hence after that effect, pregnancy can only be terminated after specific criteria as mentioned in the act have been met. These conditions are:

- (i) The pregnancy can seriously endanger the life of the mother;
- (ii) The woman's physical and mental health is not accurate as for carrying a pregnancy;
- (iii) The foetus has been detected with abnormalities;
- (iv) The foetus blood sample is different from the mother;
- (v) The pregnancy has occurred from rape;
- (vi) The pregnant mother is below 18 years of age;
- (vii) The pregnancy is the result of a contraceptive failure.

The condition in India before 1971 was very critical in relation to the abortion laws and it was basically governed by the Indian Penal Code that was itself drafted in 1860's. "Abortion" at those times was defined as having a purposeful 'miscarriage' and basically the abortion procedures were performed by unskilled practitioners. In those times, the system of imposing

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<sup>10</sup> *Supra* Note. 8

<sup>11</sup> *Termination of pregnancy and abortion in India*, ANGLINFOINDIA (Jun 20, 2017, 12:35 pm) available at <http://india.angloinfo.com/healthcare/pregnancy-birth/termination-abortion/>

hefty fines and brutal punishments was undertaken and even the women undergoing the abortion procedures were punished under the penal jurisdiction.<sup>12</sup> However, the only exception that was regulated was to allow abortion in order to save the life of the mother. However, there is a remarkable difference in the abortion procedures of early 1971 as countless women died in attempt to illegally undergo abortions. It was in 1964, the government through the '*Central Planning Board*' took the issue of abortion with its wide legal, social and moral understandings.<sup>13</sup> Mr. Shantilal Shah, then the Health minister of Maharashtra lead a '*Abortion Study Committee*' and procured the suggestions for framing an act which we today know by the name of Medical Termination of Pregnancy (MTP) Act. In ancient and primitive times, there was a widespread practice of abortion and people were involved in widespread activities of sex selection.

Abortion rights are basically understood much closer to the 'Human Rights' which is seen elementary to every Human Being. It is concerned with the inherent dignity of a woman and the rights of the baby to live. Basically, it's considered murder on the face where an illegal abortion is proceeded violation the terms of the MTP act. It's internationally understood that the basic human rights are inalienable ant that too with the life of the unborn baby.<sup>14</sup> However as the time took evolutionary changes, much protection was seen to be essentially granted to give protection to the unborn child. Abortion is also attached to a 'women's reproductive right'. This right basically deals with a women's decision to shape her reproductive choices and sexual health. Reproductive rights are internationally recognized and are given a vascular credit in the development and promotion of women's related rights. Also, the reproductive rights were formulated with the philosophy that all the associated laws in relation to women must mention specifically about woman's critical development with physical and mental wellbeing. In Indian Courts, the issue of abortion was primarily left to the decision of the mother. However, situations may arise where multiple activities may prove injurious to the fetus. Legalising abortion has its own benefit on one hand. The very first argument is of the '*bodily sovereignty*' as it's solely the right of the mother whether to carry on with the abortion or to give birth to the child. Hence no one should force the mother to carry or to terminate the pregnancy. On other

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<sup>12</sup> S. Chandrasekhar: *India's Abortion Experience* Denton, University of North Texas Press, 1994

<sup>13</sup> *Ibid.*

<sup>14</sup> Manisha Garg, *Right to Abortion*, (Jun 20, 2017, 12:35 pm) available at [http://www.legalserviceindia.com/articles/adp\\_tion.htm](http://www.legalserviceindia.com/articles/adp_tion.htm)



situation is of safeguarding the foetus and safeguarding its human rights. Also if abortion is totally banned, 'back-street' abortions will take place and would be impossible to counter.

## LAWS OF OTHER COUNTRIES

### *United Kingdom*

Abortion is legal in the UK. Current UK abortion law was clarified in the 1967 Abortion Act.<sup>15</sup> Previously, abortion laws had been extremely strict. The Ellenborough Act 1803 for example carried the death penalty for an abortion taken place after 16-20 weeks when it was believed the soul entered the Foetus.<sup>16</sup> Generally, an abortion be carried out only during the first 24 weeks of pregnancy.<sup>17</sup> However, if there is a substantial risk to the woman's life or foetal abnormalities, there is no time limit. It is possible to have an abortion legally after imposing 24-week period but only if it is either necessary to save the mother's life, to prevent long lasting injury mentally or physically both.

### *USA*

In U.S.A abortion was practiced until the late 1860s till it was not banned by the states of the country. The state remained the same until the Supreme Court in its landmark judgment changed the situation and legalized abortion<sup>18</sup> of *Roe vs Wade*<sup>19</sup>, where a single woman was allowed to abort her child. Even though there was, no threat to her life. It marked a change in the law where the right to abortion was not granted. With only exception being that of threat to the life of mother. The right to abortion was legalized by making constitutional amendments in the constitution in 1960. Though the path towards legalizing the law was much more complex than what people know. In various cases such as in *Doe vs Bolton*<sup>20</sup> the right for abortion was

<sup>15</sup> MARIE STOPES, UK (Jun 20, 2017, 12:35 pm) available at <https://www.mariestopes.org.uk>

<sup>16</sup> INBRIEF, (Jun 20, 2017, 12:35 pm) available at <http://www.inbrief.co.uk/>

<sup>17</sup> NHS CHOICES, (Jun 20, 2017, 12:35 pm) available at <http://www.nhs.uk/>

<sup>18</sup> Obos Abortion Contributors, *History of Abortion in U.S.*, Ourbodies Ourselves, (Jun 20, 2017, 12:35 pm) available at <http://www.ourbodiesourselves.org/health-info/u-s-abortion-history/>

<sup>19</sup> *Roe v. Wade*. 410 U.S. 113. Supreme Court of the United States. 1973

<sup>20</sup> *Doe v. Bolton*, 410 U.S. 179. Supreme Court of the United States. 1973

not granted. In the current scenario, a woman has the right to abortion exception of partial birth abortion ban.<sup>21</sup>

### *Australia*

In Australia abortion is governed under the principals of criminal law. Except the Australian capital tertiary, every state has its own law concerning abortion. In New South Wales and Queensland abortion is crime for both doctor and women with an exception to the case, where there is a serious threat to mother's life. In Australian Capital territory its legal if doctor approves. In Tasmania legal up to 16 weeks, after that approval of two doctors is needed .In Western Australia legal up to 20 weeks though there are some restrictions after 16 weeks and very restricted after 20 weeks .Likewise there are different laws in different states.<sup>22</sup>Even in Australia, there a question mark over when it is legal to allow a doctor, mother to abort a child on moral grounds and when not this topic is far from finished and has been a continuous matter of debate in the parliament of Australia.

## **JURISPRUDENTIAL VIEW**

### *Nikita Mehta case*

The petition was filed by a couple from Mumbai, namely Haresh Mehta and Niketa Mehta <sup>23</sup>, asking the court to struck down section 3(2)b, medical termination of pregnancy act which restricts the ceiling for termination of pregnancy/abortion of a child in the fetus to twenty weeks<sup>24</sup>. The contention that was that this provision maybe just and necessary at the time of formation of the act in 1971, but with the growth of technology in field of medicine and research has made this section unreasonable and obsolete. Nikita Mehta took permission from the high court bench of division bench of Justice R M S Khandeparkar and Amjad Sayed to terminate the pregnancy and abort her child in the 26th week of pregnancy. Nikita Mehta's unborn child was surfing from a fatal heart defect, which could be diagnosed only after 20

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<sup>21</sup> An overview of history and legality of abortion in US, ABORT73.COM., (Jun 20, 2017, 12:35 pm) available at [http://www.abort73.com/abortion\\_facts/us\\_abortion\\_law/](http://www.abort73.com/abortion_facts/us_abortion_law/)

<sup>22</sup> *Australian Abortion Law, CHILDREN BY CHOICE*, (Jun 20, 2017, 12:35 pm) available at <http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice>

<sup>23</sup> PTI, *High Court Refuses permission to abort 26-week fetus*, ECONOMIC TIMES, August 4, 2008

<sup>24</sup> Herein referred to as the MTP Act (The Medical Termination of Pregnancy Act)

weeks of pregnancy. Due to this fatal abnormality, it meant that in all probability as soon as the birth of the child, he would have been subjected to an operation installing pacemaker which is temporary in nature and must be change after a particular amount of time.

The case drew a lot of media attention, with couple coming over various chat shows, over news channel and explaining /defending their choice as well criticizing the present law. A lot help poured in for the couple from all the nooks and corners of the country but Nikita Mehta was remarkably unequivocal with her views stating that her choice is a private choice, which is not that surprising, as disability has remained a private matter in India unlike countries like Ireland where there a comprehensive social support in place<sup>25</sup> .

The doctors discovered the disability faced by unborn child in the fetus of Niketa Mehta in the 22nd week and by then the stipulated time line, which allowed a mother to terminate the pregnancy, was over. While giving its verdict, the division bench of the high court of Mumbai dismissed the application. It said that, in this case even if the parents applied to the Honourable court before twentieth week of pregnancy the judgment would have been the same, as the medical experts did not express any verdict that the child when born will suffer from serious handicaps. As per the defects diagnosed, as of now, only a cardiac surgery would be required. Apart from that, the bench refused to struck down and modify the 37-year-old law. It stated that judicial officers are only allowed to interpret the given laws and cannot make new ones; it is the job, which is entrusted to legislators by the constitution of India<sup>26</sup>. Thereby Miss Mehta Nikita Mehta was not granted the right to terminate the pregnancy and had to bear with an unwanted pregnancy until 27th week when she had a miscarriage.<sup>27</sup> The gynaecologists in India as well as throughout the world supported Niketa Mehta in her choice of aborting the pregnancy.<sup>28</sup> Some of the doctors backed it up with data in their support, stating the occurrence of foetal abnormalities in all live births is around 1% every year amounting to around 2.6 lakh babies having congenital problems, with the high tech tools and technologies available to the doctors. They said that they presume and diagnose around 90% anomalies within 20 weeks of pregnancy and if the anomalies are serious, parents are allowed to make their choice/have their

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<sup>25</sup> Neha Madhiwalla, *The Niketa Mehta Case: Does the right to abortion threaten disability rights?* INDIAN JOURNAL OF MEDICAL ETHICS, (Jun 20, 2017, 12:35 pm) available at <http://www.issuesinmedicaethics.org/index.php/ijme/article/view/456/1110>

<sup>26</sup> Durga Das Basu, *Introduction to the Constitution of India*, 21st Edn, ISBN: 9788180389184

<sup>27</sup> *Ibid*

<sup>28</sup> Indo-Asian News Service, *Gynecologists support Niketa Mehta on Abortion*, INDIA TODAY, August 7, 2008

say. However, the remaining 10% problem, as is case of Niketa Mehra, could be diagnosed at later stage only. Thereby Dr. Nikhil Datar, the doctor of Niketa Mehta plans to file a petition in supreme court seeking extension/amendment in the section 3(2) b of the MTP act, stretching the time line to 24 weeks allowing parents extra time and giving parents a choice in real sense to terminate the pregnancy of foetal child.

He also supported his view, stating that even in those countries where medical termination of pregnancy is allowed only until 12 weeks, have an exception clause. This is based on medical evidence in case of severe foetal impairment, as in such cases there is always a threat to mother's life.<sup>29</sup> There are various other arguments, which are in favour of the termination of pregnancy till 25 weeks. The Federation of Obstetric and the Gynaecological societies of India (FOGSI), which comprises of more than 24000 members, said that the risk which a mother suffers in case of termination of pregnancy after 25th weeks of pregnancy is more or less same as in case of medical termination of pregnancy at the end of 20th week. Thereby in case of a foetal abnormality, which has been detected and would lead to extremely severe handicap at birth, should be allowed to be terminated.<sup>30</sup> After the Nikita Mehta case and strong arguments in support of Nikita Mehta, the central government formulated a panel in order to review the medical termination act led by the health minister, which has advised government to extend the cover and legalize the option of medical termination of pregnancy to 24 weeks.<sup>31</sup>

### ***Savita halappanavar case***

The dubious demise of Savita Halappanavar on 28 October 2012, at University Hospital Galway in Ireland, had prompted across the country challenges over the nations like India, England and numerous others. The worldwide protest was actually meant calling for a review of the abortion laws in Ireland. Ireland is grappling to prove its point regarding the anti-abortion legislation of its country which led to the death of Savita Halappanavar in the hospital while she was 17 weeks pregnant with the symptoms of contractions prior to a natural

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<sup>29</sup> Malathy Iyer, *2.6 lakh Niketas in India every year? Foetal Areas Remain Neglected Every Year*, TIMES OF INDIA, July, 14, 2009

<sup>30</sup> MRS. X AND MRS. Y vs. UNION OF INDIA & Ors., ( Jun 20, 2017, 12:35 pm) available at <http://www.hrln.org/hrln/images/stories/pdf/xandy-petition-8-3-14.pdf>

<sup>31</sup> Vineeta Pandey, *Make Abortion Legal Upto 24 Weeks*, DNA, 11 July, 2009

miscarriage which was later assessed to be a bacterial infection<sup>32</sup>. During her 17<sup>th</sup> week of pregnancy when she felt that something is wrong with her womb, she immediately sought medical attention and went for treatment at University Hospital Galway. She asked for medical termination of her womb i.e. abortion but it was refused on the ground that the fetus is still having the heartbeat and her life seems to be in no danger because of this unborn child. Further on she was also told the abortion which she is planning for is not legal in Ireland due to some strict provisions of anti-abortion laws in the country. After few days when she returned home, she just collapsed in her restroom and was taken to hospital for further treatment where the foetal remains were removed from her uterus after diagnosis of septic shock in accordance with the Irish law of the country<sup>33</sup>. But unfortunately, Savita's condition deteriorated further due to septicemia despite being treated with oral and intravenous antibiotics for infection. All these proved to be ineffective as her condition rapidly evolved to the point of organ failure and finally cardiac arrest and death on 28 October 2012.

The news of Halappanavar's death spread rapidly through all the social media outlets, which resulted in rallies and protests all across the world to show unity for the change of abortion laws in Ireland which was claimed to be the basic factor for the death of Halappanavar's. As Savita and her husband belonged to Indian origin, therefore following the news of her death, a quick official inquiry was requested by the Indian Government through the Indian diplomatic and consular officials into the events surrounding Halappanavar's death to the authority of Ireland. Along with the involvement of many countries in this event for protecting women from adverse pregnancy, the United Nations Special Rapporteur for physical and mental health also became concerned, saying abortion should be legal if a pregnancy is adversely impacting a woman's health.<sup>34</sup>

***Landmark Judgment: 14-year rape survivor granted permission to abort her pregnancy at 25<sup>th</sup> week.***

The Supreme Court of India in the very recent case came for the rescue of 14 years old victim of rape who had been denied permission for abortion by both the sessions as well as High

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<sup>32</sup> The content is available on <http://www.telegraph.co.uk/news/worldnews/europe/ireland/10119109/Irish-abortion-law-key-factor-in-death-of-Savita-Halappanavar-official-report-finds.html> assessed on June 28, 2015.

<sup>33</sup> Hugo Gye, *Horrendous, barbaric and inhuman*, MAIL ONLINE, April 19, 2013

<sup>34</sup> DNA Research & Archives, *Savita Halappanavar's Husband leaves Ireland*



Court. Basically, this was the case of a 14-year-old girl who was raped by her doctor Jatin Mehta whom she had visited for treatment of typhoid few months back. After this incident, she got pregnant and approached the court through his family for termination of her foetus. The bench of apex court consisting of Justices A R Dave & Kurian Joseph said that if the doctors say that firstly the victim needs to be examined by the panel of gynecologists and psychologist and if they say that the girl needs to be operated then they can go for abortion<sup>35</sup>. The Supreme Court in this case gave a landmark judgment by overturning the decision of Gujarat High Court which basically denied abortion to the girl as her pregnancy exceeded 20 months and according to Indian law it was illegal and in contrary to law for aborting the fetus of 25 weeks.<sup>36</sup> This case has given a new dimension to the abortion laws and the rights of women by protecting them from unnecessary physical and mental trauma of continuing with the pregnancy and giving birth to the child. Although this case may give a negative impact on society by not thinking about the rights of unborn child and the morality of the society but it has given a path breaking decision in coping up with the trauma of rape for that innocent minor girl and many other rape survivors.

## SOCIAL IMPLICATION OF ABORTION

Female infanticide has existed for centuries and this has become the main reason for the increasing rate of abortion.<sup>37</sup> The society should realize the impact of abortion not only on the women but on the society as well.<sup>38</sup> The recent case in India of a baby girl *Falak* who was bitten to death showed how the problem of selective sex abortion is increasing at an alarming rate.<sup>39</sup> Implications of abortion can be very risky for the women, family, and the community.<sup>40</sup> From an individual point of view the main impact is on the health of the women, pain and the psychological impact that this decision will have on the women. It has been proved that the decision of abortion and its effects can be very dangerous.<sup>41</sup> Impact of abortion is on

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<sup>35</sup> “Landmark Judgement: 14-year-old rape survivor allowed to abort b Supreme Court”, Zee News, July 31, 2015.

<sup>36</sup> This content can be found at <http://www.mid-day.com/articles/landmark-judgement-medical-experts-allow-14-year-old-rape-survivor-to-abort-after-25th-week-of-pregnancy/16413188> accessed on August 2, 2015.

<sup>37</sup> This content can be found at [www.Liveactionnews.org](http://www.Liveactionnews.org) accessed on 1st July, 2015

<sup>38</sup> This content can be found at [www.Liveactionnews.org](http://www.Liveactionnews.org) accessed on 1st July, 2015

<sup>39</sup> Kishwar Desai, “Society needs to realize the horrific consequences of sex selective abortions” ( Jun 20, 2017, 12:35 pm) <http://www.theguardian.com/commentisfree/2012/feb/24/society-sex-selective-abortion>

<sup>40</sup> Warren M hem, SPECIALIZING IN LATE ABORTIONS FOR FETAL DISORDERS, ( Jun 20, 2017, 12:35 pm) available at <http://www.drhern.com/news-a-publications/26-abortion-medical-and-social-aspects.html>

<sup>41</sup> *Ibid*

the family as well. The family of the women is also effected in mental as well as in social way.<sup>42</sup>The adverse effects of abortion can be seen increasing at an alarming rate which leads to depression, mental illness and in some cases suicide.<sup>43</sup> These social implications have affected the community on the large scale. These decisions are not accepted by the community and they show their reviews through newspaper, social media.<sup>44</sup> These decisions create a negative impact on the women's who have taken the decision of abortion. So definitely the social implications of abortion and selective sex abortion are harmful not only for the women but for the community as well as this creates the imbalance between male and female ratio and this have been the main problem in China and India.<sup>45</sup>

## STATISTICAL DATA TO MEDICAL TERMINATION OF PREGNANCY

Every two hours, a woman is suffering from an abortion death the counting of which approximately reaches to 4000 deaths in a year. These estimates have been made by IPAS, an International Level Non-Governmental Organisation which aims to secure woman lives from risky abortion services<sup>46</sup>. We have another transforming data which states that the countries where abortion is legal, as low as 'One in a Lakh' death occurs there<sup>47</sup> and much similarly, in countries where abortion is legally valid, abortion rates are lower. This study makes us bind to the conclusion that where the social phenomena's have been restricted by the courts, ultimately that causes more statistical deaths. However, abortion is not a legal term. It can be correctly dealt as a stream of science where a professional medical practitioner skilfully operates on a woman under full facilities and equipment. Mostly in rural areas, such heavy and sound facilities are unavailable however much opposite to the sensuous beliefs of the people; such ill medical practices bring complications that may derogate the health systems and may even cause death.

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<sup>42</sup> *Id.* at 36

<sup>43</sup>This content can be found at <http://www.familyandlife.org/resources/faq/effects-abortion> accessed on 1st July, 2015

<sup>44</sup>*Ibid*

<sup>45</sup> *Id.* at 39

<sup>46</sup> The excerpt has been taken from the link [icesindia.com/articles/pregact.htm](http://icesindia.com/articles/pregact.htm) accessed on 30th June, 2015

<sup>47</sup> Amitabh Sengupta, "How section 312 of IPC read with the Medical Termination of Pregnancy Act, 1971 infringe the right to life of the mother'", (Jun 20, 2017, 12:35 pm) available at <http://www.legalserviceindia.com/article/1285-Medical-termination-of-Pregnancy.html> accessed on 30th June, 2015

For the first time in 1971, the Medical Termination of Pregnancy act came into force however amended in 2002 to better its legal affects with the changing moulds of the society. This ‘*abortion law*’ basically comes to aid when there prevail equal chances of risky pregnancy or where the birth of the child may cause a serious damage to the mother’s health and generally in such situations, a mother can decide to abort the child. The abortion under the MTP act can also be practiced when the mother who is pregnant is an under-aged individual (as in the cases of child rape) or where the mothers body is not physically fit to grant the birth of the child. However, the medical termination of pregnancy act, herein the MTP act does not allow the medical practitioner to use the medical techniques for gathering information about the sex of the child. It is considered completely illegal under Indian Law and the medical practitioner may be sentenced to imprisonment on practicing such illegal procedures.

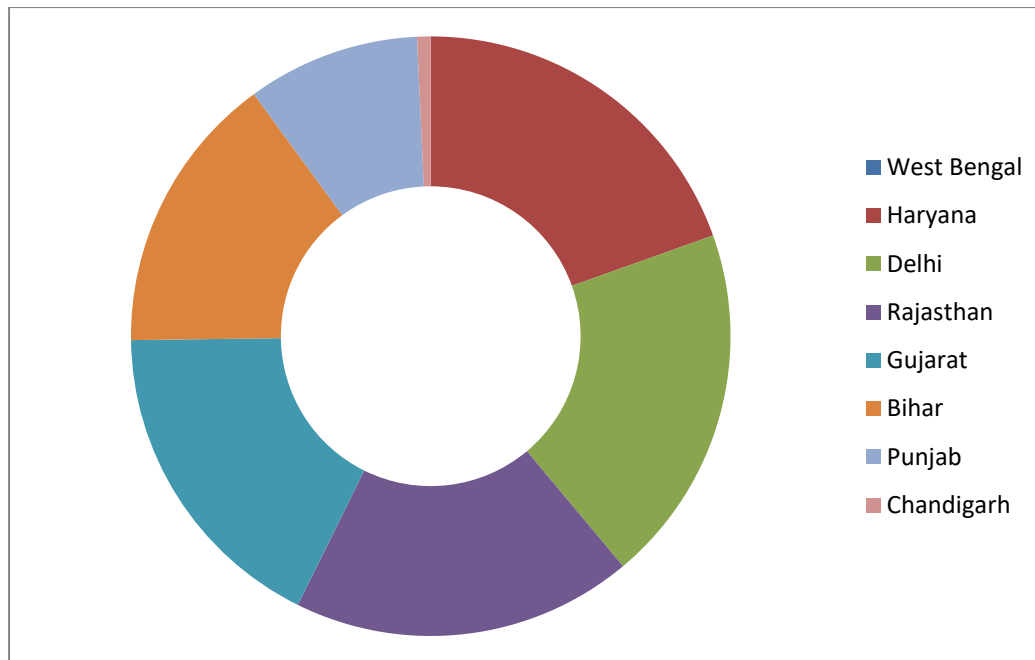
The Medical Termination of Pregnancy act lays downs important rules and regulations for the purpose of safe medical abortions however in spite of abortion laws being functional in the country, people still go on with illegal means for sex selection and unsafe abortions which counts the life of the pregnant mothers and hence becomes one of the major factors of high rate of maternal mortality in India.<sup>48</sup>

*The researcher has arranged some of the statistical records of MTP collected from various states:*

- (i) *Family Welfare Statistics, 2009*: this data was brought down by the Union Health Ministry and it demonstrated that in 2005, near about 7.25 lakh MTPs were preferred while in 2006, the number decreased to 7.21 lakhs. The data also demonstrated that there were about 6.82 lakh induced abortions in the country in the year of 2007. In 2008, Uttar Pradesh represented as the state having highest number of Medical Termination of Pregnancies with 89, 194 MTPs followed by Tamil Nadu with 63, 875 MTPs and then Assam with 58, 409 MTPs.

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<sup>48</sup> Kriti Dwiwedi, “*Medical Termination of Pregnancy Act: an overview*” (Jun 20, 2017, 12:35 pm) available at <http://www.legalservicesindia.com/articles/pregact.htm> accessed on 30th June, 2015



**Graph 1:** Abortions preferred in the following states have been represented in the Chart: West Bengal (46,753); Haryana (31,126); Delhi (30,846); Rajasthan (29,292); Gujarat (27,837); Bihar (24,149); Punjab (14,834); Chandigarh (1,162)<sup>49</sup>

- (ii) The data further represented that in the North-eastern States, the rate of MTPs were much lower in fractions as compared to their counterpart states. While Meghalaya recorded only 44 MTPs, the figure for Mizoram was 524. Nagaland had 670 and Arunachal Pradesh 655 MTPs.<sup>50</sup>
- (iii) *The condition in Maharashtra:* The Family Welfare Statics data completed in 2009 demonstrated that in Maharashtra itself, in 3 years period 93% of the abortions were conducted in the Urban areas. Further, seventy one percent of the MTP centers are privately run.

<sup>49</sup> Wm. Robert Johnston, "India abortion Percentages by state and territory, 1971-2013" (Jun 20, 2017, 12:35 pm) available at <http://www.johnstonsarchive.net/policy/abortion/india/ab-indias2.html>

<sup>50</sup> *Ibid*

- (iv) *The condition of Gujarat:* A study conducted here demonstrated that 58% of the 816 approved abortion centers were run by an essentially private-for-profit non-governmental sector (Barge S. *et.al.*, 1994).<sup>51</sup>

The basis of representing this data was to demonstrate an analysis of the Indian situation where the pregnant mothers are at a major risk of health-related risks. An International report quoted about the scenario of India in words that “only 2 in five of the estimated 6.4 million abortions that annually take place are safe.”<sup>52</sup> In India where about seventy three percent of the population lives in rural areas, the propaganda of free & universal accessible health care is of central importance. However, in general a review can be understood that about how many people are really accessible to proper and legal abortion techniques.<sup>53</sup> However the sacrilege rests upon the pregnant mothers because at the terminal end, they are harmed globally due to unsafe terminations killing almost seventy thousand women a year. However, there can be a number of factors responsible for the cause of it however according to a report, in the globe, South-East Asia recorded the highest rate of abortion.<sup>54</sup> Between 1995 and 2003, the rate of abortions fell from 26.8 million to 25.9 million and of twenty-six million abortions performed in 2003, about 16 million were safe however 10 million were performed with unsafe procedures.<sup>55</sup>

## CONCLUSION

Ability to give life is one of the greatest gift given by god to woman, but isn't it a choice of a women to control his body and decide that if she wants to a mother or not. Well some might argue that this choice should have been made before pregnancy rather than after it. In some scenario where a women's fetus is suffering from a fatal injury making her/him unable of having a normal life, and living with serious handicap in such case the right to abortion of a child has to be granted. Our current law provides a clause for abortion of a fetus by 20 weeks. But some cases, which are substantial in number the fatal injury, can only be detected

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<sup>51</sup> “Abortion”, ECO INDIA, (Jun 20, 2017, 12:35 pm) available at <http://www.ecoindia.com/views/abortion.html>

<sup>52</sup> Kounteya Sinhal, “Number of abortions dropping in India”, TIMES OF INDIA, September, 15, 2010

<sup>53</sup> The content is available at the link <http://www.ecoindia.com/views/abortion.html> accessed on 30th June, 2015

<sup>54</sup> The content is available at the link <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2709326/> accessed on 30th June, 2015

<sup>55</sup> The excerpt is available at the link <http://timesofindia.indiatimes.com/india/Number-of-abortions-dropping-in-India/articleshow/6555212.cms> accessed on 30th June, 2015



afterwards a woman is helpless and had to follow the rule of law. Thereby making has go through cumbersome process of an unwanted pregnancy. Which in turn leads her face lot of trauma and unwanted economic pressure .A change in law should be made allowing a women to abort her child in case of a fatal injury, even if the stipulated time line of 20 weeks have passed away. The recent suggestion by the panel of extending the time line to 24 weeks is a welcome change but a lot more has to be done to protect the right of woman or as a meter of fact of parenthood in true nature. It's high time that we start talk in right tune about doctors who provide counseling regarding pregnancy and abortion, also services of abortion. There is also a need for right education being inculcated to man and woman regarding the process of abortion a proper understanding will help in opening their mind embracing abortion. Politicians should make efforts in the regards rather than making laws which do nothing else except creating a added burden. Though in the present scenario women who opt for adoption are getting a lot of support and a sense of understanding from the society but a clear authentic conversation which is a need is still somehow missing which can be achieved by providing education and enacting favorable laws in this regard.<sup>56</sup>

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<sup>56</sup> The content is available at <http://time.com/3838489/cecile-richards-celebrities-talk-about-abortion/> assessed on July 1, 2015