

CHANGING PERSPECTIVES AND ETHICAL DILEMMAS OF ABORTION RIGHTS WITH SPECIAL REFERENCE TO ABORTION OF DISABLED FETUS

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Abstract

Abortion as a right is still a debatable concern in the realm of medical ethics. Many consider abortion as unethical but with the passage of time and advancement of technology, abortion is considered to be ethical for the reasons to be noted. Ethics is considered as a regulatory analysis of the concept of morality. The principles of ethics and virtue are universal and are to be applied to everyone irrespective of religion, race and various other spiritual beliefs. Therefore, medical ethics have been considered as “trans-cultural, transnational and trans-religious” the realm of ethics can be enlarged to morality, values, etiquette, and responsibility. Can abortion be brought under right to life and personal liberty? Life of a human being is precious and every human has the right to life but whether the fetus also has a right to life is both a legal, moral and ethical issue. There are diverse opinions about abortion rights all over the world. The infamous case of Roe v. Wade, that set a precedent on abortion rights since decades, however has been overturned by the US Supreme Court in the case of Dobbes v. Jackson in 2022. On the other hand, the laws in India are different. Article 21 of the Constitution of India speaks about right to life and personal liberty but doesn’t guarantee abortion as an exclusive fundamental right nor the Indian legislations lack clarity on abortion as a fundamental right. The only aspect related to abortion that citizens are aware is that, under the Medical Termination of Pregnancy Act 1971, sex of the baby cannot be revealed till birth of the child, due to the existence of a large number of brutal sex selective abortions (female feticide) in many parts of India as a girl child is considered to be a burden. Whether the women are bestowed with the right to choose to abort the baby in light of any such circumstances has always been a heated discussion. This paper aims to discuss the abortion rights of women and the right to life of an unborn disabled child in light of global perspective of women’s rights. The research has been accordingly undertaken to understand the disability abortion and the ethical dilemma around it.

Keywords: (Abortion, Right, Unborn child, Disability selected abortion, Fundamental Right)

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6.1 RECOMMENDATIONS/ SUGGESTIONS

1. SIGNIFICANCE OF THE STUDY

This research paper will be beneficial to the legislature in giving suitable changes to the provisions of the medical termination of the pregnancy Act which legalizes abortion if there is any disability in the fetus. This research work will be advantageous to the academicians, lawyers, law makers to evaluate the ethical concern that is revolving around the disability abortion and the moral dilemma. Through this research several challenging questions will be addressed, nevertheless the researcher will provide the two sides of the coin to actually resolve the ethical dilemma. This piece of research work will be beneficial to the undergraduate as well as the graduate students in law, medicine, political sciences, social sciences and philosophy etc. This will certainly be helpful to the legislature that is the lawmaking body and also for the nongovernmental organizations which usually fight for the rights of the disabled people, unborn child, women's rights issues etc.


Last but not the least the paper will also be beneficial to the general public as the current topic deals with ethical dilemma that is surrounded around disability selected abortion.

2. INTRODUCTION

*"There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned."*¹

Abortion is essentially considered a social issue. It is the most debatable and contentious topic in India. Right to abortion from the historical past had been pondering through various moral, ethical, legal and political aspects. Abortion right is complex as it is the accumulation of various facets such as religion, race, ethics, law as well as medical aspects. Since abortion relates to the taking of some human life, it is considered to be the most controversial and a human right issue. If the arguments for and against abortion from the ancient past are considered, it is quite evident that the entire debate is associated with legal as well as religious considerations. When we look at the arguments of those who support abortion, they argue in terms of saying that the women have their "right to choose" their pregnancy. Those who argue against, generally back their statements by cultural and traditional arguments. But, it is very much required that, women should be given their rights to determine one's own reproductive and fertility related matters, that is, they should have the right to choose and also while forming the policies with regard to abortion their rights must be given adequate protection. Nevertheless, if one

¹ Betty Friedan, *Abortion: A Woman's Civil Right*, 39 (reprinted in Linda Greenhouse and Reva B. Siegel, 1st edn. 1999).



ponders through history, it is quite evident that, women have followed various means to terminate their unwanted pregnancy. Historical past of Abortion speaks about various debatable aspects such as moral, ethical, legal and also political concerns.

The preamble of UDHR affirms that, the very basic right that all people belonging to the United Nations should have is equal right, and by a combined reading with article two, it is quite evident that every person has the right to life and right to live with utmost dignity and each one shall be treated equally without any discrimination. This essentially means that no person should be deprived of this right arbitrarily, signifying the essence of rule of law which is essential for backing up this right. What the covenant of ICCPR provides that, this right to live with dignity is provided to every “human being” unlike every “person”. So essentially, the word human being is a scientific word for the word living being and thus there lies one argument that the basic human right documents are actually against abortion, as they do not create any kind of right to abortion. Nevertheless, some of the jurists have argued that the right to life comes into picture only after the child is born, this kind of interpretation was actually supported by some kind of international treaties, but was not that successful in its negotiation whereby they have proposed to add a word in the convention saying that the right to life is guaranteed from the birth of the child, that is from the moment of conception, but this attempt was not successful. The unborn has life from the stage it transforms into fetus.

2.1 ABORTION AS A HUMAN RIGHT

ICCPR convention provides that, everyone has the inherent right to life, but with respect to other rights the word that has been used is “everyone” and also “every person”. So now the question which arises is that the word “every human being” has a much wider connotation than that of the word used for other rights. So essentially the question arises is whether the unborn is included in as person or not. Nevertheless, there is no kind of literature with regard to the above contention. But it is clear that through the criminalization of abortion there are many implications with regard to right to life. For instance, a woman is refused contraception because she doesn’t have her husband’s permission, many teenagers are forced to have sex against their will as a result many females commit suicide as they are unable to go through abortion for pregnancy conceived against their will (rape victims) or for unwanted pregnancy. Most of the young girls and women are unaware of their rights, how to safeguard and protect their rights through the legal system. Hence, they opt for illegal services and unsafe abortion process. Criminalization of abortion by the respective country or state, severe social dishonor, objection by health-care service providers is a clear infringement of right to life. The inability of the state to prevent unnecessary deaths due to the laws which are anti-abortion legislations would indirectly hamper its functioning to fulfill its obligation to ensure right to life. Even Article 12 of the CEDAW convention can be quoted here, which highlights that, the duty of the state is to protect the rights of all women, and to eradicate all forms of discrimination against women in the realm of health care, so as to ensure equality to all men as well as women to provide them with adequate access to all sort of health care facilities including that of family planning.

2.2 ABORTION AND THE INDIAN CONSTITUTION

The framers of the Constitution of India are quite vigilant and have enshrined article 21, which essentially provides that every citizen has the right to life, which essentially includes even the right to privacy under its ambit. This right to life under article 21 is considered to be the most precious, fundamental and inalienable right that is enshrined to all the citizens. In this similar connotation each and every woman has her respective right to life, her life to live with dignity and personal liberty, her right to pursue her individual happiness and thus essentially sanction her right to abortion. Women have individual right to make choices with regard to their sexual and reproductive life. The international community in order to ensure basic human rights to everyone, it had thoroughly incorporated and granted reproductive rights to all women. Thus, in order to fulfill the international mandate all national and international states have thoroughly recognized and granted the reproductive rights to all women. Thereafter in order to further fulfill its obligations the states have formed various schemes and policies to ensure the protection of these rights. Today most of the industrialized countries like New Zealand, Italy France, Germany, Ireland, have granted women the unconditional right of abortion in order to uphold their right to bodily autonomy. Roughly around 100 countries still have certain restrictions in place, where abortions are allowed only in certain circumstances like socioeconomic reasons, factors affecting physical or mental health of woman, or subsistence of fetal abnormality.

3. ABORTION RIGHTS AND THE MEDICAL TERMINATION OF PREGNANCY ACT

Abortion was legalized post the landmark judgment of *Roe v. Wade*², after which many countries have freed the abortion laws. In the case of *Planned Parenthood v. Casey*³, the court linked abortion with the viability of a fetus rather than that of the rigid rule of trimester as laid in the case of *Roe v. Wade*⁴. In 1964, in India, on the recommendation of the “central family planning board” the ministry of the health had constituted one committee in order to make the adequate legislation with regards to abortion. After a thorough analysis of the various statistical data, the committee submitted a report after which *The Medical termination of the Pregnancy Act 1971*⁵ was passed that liberalized the existing abortion laws in India. The Act is quite lucid which consists of eight sections. This Act accordingly deals with the variety of criteria based upon consideration of various situation in which pregnancy can actually be terminated by a recognized registered medical practitioner.

The grounds for pregnancy termination is limited to Section 3 of the MTP Act⁶; abortion has been legalized only in few instances where there is a failure of any of the contraceptive measures, or in the instances where the pregnancy is seriously going to affect the physical or the mental health of the women, in these instances the consent of the mother(women) is essential unless the woman is of unsound mind or she is a minor, in that cases the consent of the guardian is important. Abortion under the Act has been permitted only within the period of 20 weeks of the gestation period. The Act has

² *Roe v. Wade*, 410 U.S. 113

³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)

⁴ *Id* at 2.

⁵ *The Medical Termination of Pregnancy Act*, 1971 Act No. 34 of 1971

⁶ *The Medical Termination of Pregnancy Act*, 1971 Act No. 34 of 1971 – section 3

been framed with good intention of considering the will of the woman, by making a mandatory compliance of the consent of the woman, but the Act fails to understand the social paradigm where the women in reality do not have that right to choose. Therefore, it is evident that the Act fails to reach an equilibrium on a comparison between the rights of the women and that of the rights of the unborn child. It is the woman who actually bear the child in her womb for nine months, who will rear the child and hence, it is she who should be given the right to actually decide whether or not to continue pregnancy or to abort the foetus.


In the case of *Nikhil Datar vs. Union of India*⁷ Sections 3 & 5 of the Act were challenged. In this case, the petitioner sought for the termination of the pregnancy at 26th week of her pregnancy when the fetus had actually been diagnosed with a heart blockage. Accordingly, the petitioner contented that section 5(1) of the Act should actually be read with section 3 in order to include all the possible eventualities and thus accordingly issue the directions to the respondent in order to allow the petitioner to terminate her pregnancy. What essentially section 3 & 5 of the said statute provides is that, there is a right for pregnancy termination only in some of the specified circumstances. The remedy that has been enshrined under section 5 can be invoked only when if the pregnancy is not terminated would be life threatening to the mother.

The court in this case held that it cannot pass any directions as the 26th week has passed and so it cannot exercise its right under Section 3 of the MTP act. The case also elaborately discussed the kind of mental as well as physical trauma that is faced by the women. The case also thoroughly discusses several ethical issues that are to be faced by the doctors in the similar instances. Abortion is always interlinked to various social, economic as well as the political aspects. The kind of abortion practices that are prevalent can be seen both in the positive as well as in the negative aspect. In a country like India there are several social barriers such as illiteracy as well as poverty. So, it is important to consider the MTP statute as the social dynamic legislation. According to the MTP Act the abortion of married women is not considered as the social stigma in contrast to its consideration to that of the unmarried women. Due to the unacceptance of abortion of unmarried women there lies lot of hindrances which also would result to massive damage to the health of women, ultimately defeating the very objective of the Act.

4. PHILOSOPHICAL ARGUMENTATION IN FAVOUR OF DISABILITY SELECTED ABORTION

It is essential to grant the women the bodily autonomy as well as the dignity. There is much debate with regard to the discrimination of abortion right of an impaired and non-impaired fetuses (disabled foetus). It is very much important for the women to be given the appropriate freedom to opt what is best for her family and her reproductive health. In order to determine the moral status of the disability selected abortion there always lies two issues in front, one with respect to the rights of the mother and the other is with regard to the legal and moral rights of the prenatal creature. Essentially one group considers abortion as an immoral act, and they advocate for the abolition of the legislation with the objective to regulate or prevent the abortion activities as they equate abortion with some

⁷Dr. Nikhil D. Datar v. Union of India &Ors., SLP (C) 5334 of 2009




activities like extracting one spoiled tooth or like performing some kind of cosmetic surgery, but nevertheless they contend that abortion can yet be permissible if it has some moral grounds. These thinkers are known as the pro-choice thinkers. The other set of thinkers opine that the woman has the constitutional as well as the moral right over her body and most importantly the privacy, which grants her with the freedom of choice, “which means that the women have all the liberty to take control of her own bodily being and thus take her own reproductive decisions”. The opinion of these group of thinkers is based on the ground that abortion is morally justified if the consent of an woman is given. These thinkers are also known as the prochoice thinkers with connotation to the moral permissibility of abortion.

Essentially both the groups put the moral status of the pregnant women above with consideration to that of the prenatal organism, and thus they argue in favor of abortion. So, majority of the prochoice groups place their claims based on the ground that “being a person is what gives an individual intrinsic moral worth”. But nevertheless, if the unborn is considered to be a person or a natural being (a rational agent) then it would be immoral to abort the fetus. The pro social thinkers consider that the “foetus are not the persons or that foetus are not rational agents” unlike the pregnant women who are considered to be the rational as well as the social beings. Therefore, the pre-social thinkers consider that placing the rights of the pregnant women over the prenatal organism with disability is not morally wrong. The two arguments relating to the moral permissibility of disability selected abortion revolve around a) extrinsic value-based argument b) intrinsic value-based abortion.

a) Extrinsic value-based argument for abortion

These are generally known as the consequential or the teleological arguments, the women should be granted to choose whether to continue the pregnancy or go for abortion. If the freedom for abortion is not been granted then there is a high degree of harmful consequences which might arise due to the lack of this freedom. “This is so because the arguments that are kept before in order to establish the moral validity of an act like abortion is based upon the pragmatic worth of the consequences of the concerned act, which in essence are the non-moral act”. The moral judgment with regard to the decision whether to go for abortion or not will be based upon the consequences of the act of abortion. It is also dependent upon how well the fetus can lead a life, and also most importantly it is based upon the considerations on the issue as to whether the foetus is being considered as a living being or not. All these things are to be borne in mind when one is arguing from the perspective of a consequentialist. There are various aspects to be considered for not allowing the abortion of a disabled fetus like health risks, prospective benefits, mental or psychological issues, economical barriers and social aspects. For instance, it is to be considered by a pregnant woman of what would be the positive and negative effect on her for having the disabled child versus ending the pregnancy with disabled fetus? It is for the woman to choose, if the child is born, will it likely lead a happy or unhappy life? What would be the impact on the family if the child is aborted or if it is born alive? How would the abortion of the fetus or the birth of the child would affect her family and so on? Thus, these consequential arguments are nothing but the utilitarian arguments”.



The basic conceptual idea behind the utilitarianism is to essentially seek happiness and to avoid the pain. So it is quite obvious that our moral focus is quite obvious to centric the maximization of the happiness and to reduce or minimize the pain. Utilitarianism is considered a type of consequentialism because it asserts that the morality of an action, law, policy, etc. is determined by its consequences or outcomes.⁸ The theory focuses on achieving the greatest good for the greatest number of people and determines morality based on the evaluation of the costs and benefits of a particular action. Thus, the argument of the pro-choice group is that a woman has total control over her pregnancy and her right is much more valuable than that of the fetus, as it is considered that fetus do not have complete rights. They consider abortion as completely a private decision and the government should rather not interfere with it.

With special reference to the disability selected abortion there can be main two arguments that are in favor:

1. One argument is based on the focal point of the disabled fetus over one's own personal interest. From the stand point of the thinker, Mackie where he essentially considers abortion to be morally justified if the fetus is either deformed or if it is suffering from any sort of disability as such. Which is in the very similar connotation to that of the euthanasia of the unborn child. This argument is essentially based on the ground that even if the fetus with disability is born, the child has to lead a very miserable life due to the serious disabilities. Hence, by considering the interest of the fetus the disability selected abortions are to be justified.
2. Second argument is essentially based upon the choice that is to be given to the pregnant women with regard to her pregnancy. It deals with instances where women do not actually want to take care of a child who is disabled, suffering from any sort of deformity from birth owing to social and economic reasons. So, if the woman chooses to terminate her pregnancy then it should be allowed. It should not be visualized as something which is immoral or unethical. Apart from these two major arguments, there are also several other arguments such as the population control argument, prevention of the unwanted child argument, privacy argument, economic argument.

b) Intrinsic value based argument for abortion

The intrinsic value based argument is also commonly known as the "right based argument", "which essentially focus upon the diminution of autonomy which is inherent in a human being, if there is a prohibition of abortion". These arguments are been laid down so as to support the abortion, so as to protect the right of the bodily autonomy as well as the privacy of the women. These arguments are deontological in nature. Some group of the philosophers essentially claim that an entity will be granted the moral status, if the entity is considered as a human being. So, now the argument goes on these lines, that is if the prenatal organism is not considered as a human being then the argument becomes irrelevant and the fetus can be destroyed. For instance, philosophers like Dr. Bernard Nathanson consider that the prenatal organism exists from the time of implantation, for philosophers like Paul Ram, it is from the time of segmentation. Some moral philosophers base their arguments on the "looks

⁸<https://plato.stanford.edu/entries/consequentialism-rule/>

like human being argument”. There were also several person centric arguments that are advanced by several thinkers. That is for instance, the view of John Locke, in his book “an essay concerning human understanding identifies the characteristics of a person”

The following logical considerations that can be deducted from Locke are as follows:-

1. The most essential and the basic characteristics of the human being is the rationality, the self-consciousness but these attributes are generally absent in the early stages.
2. The basic criteria for the consideration of the moral status is the person hood
3. Therefore, the prenatal organism lacks these qualities in its early stages of life.
4. Therefore, the prenatal organism with any disability can be aborted.

What Karl Marx opines with regard to the characterization of a person is that, man has the unique ability of characterization which actually can be differentiated from all other kinds of living beings. This differentiation lies because of the ability of the man to think, to judge, to imagine, to anticipate and so on. Out of all capabilities which the man possesses the chief important aspect that makes man an exceptional is his ability to conceptualize his thinking. So, essentially the prochoice thinkers come to the following logical deductions and analogies by having a basis upon the Karl Marx notion of human being.

1. The basic criteria for establishing the moral status of the human is the person hood.
2. The basic criteria for the human being is the capacity to think as well as the capacity to anticipate, to reflect, to imagine and so on. But these are generally absent in the early stages of the pre-natal organism.
3. The prenatal organism is not considered to be a human being, at least in its early stages and thus lacks the moral status.
4. Hence if the prenatal organism whether suffers from any disability or not can be aborted.

5. PHILOSOPHICAL ARGUMENTATION AGAINST THE MORAL PERMISSIBILITY OF DISABILITY SELECTED ABORTION

It is believed that every fetus should be considered a human being with the same rights and protections as a born individual, starting from the moment of conception.⁹ Hence, a few philosophers considered disability selected abortion as a morally condemnable act and hence advocated for introducing appropriate legislation in order to prevent abortion of a disabled fetus. According to them, the fetus has the right to life and no one can take away this right. These academics are known as the pro-life thinkers. According to them,

- a) A human being's right to life begins at conception,
- b) Abortion is an unjust act that violates this right to life,
- c) The fetus has a genetic code that makes it human.

⁹Jude I. Ibegbu, “Rights of the unborn child in international law: towards a convention”

Thus, based on the above claims, one can say that abortion is morally equivalent to murder. The arguments of the pro-life thinkers is also divided into two types similar to that of the pro-choice thinkers:

a) "Extrinsic value based prolife argument"


"These arguments are typically referred to as the consequential or teleological arguments. Advocates of this argument base their stance on the post-abortion syndrome and other medical and psychological impacts of abortion. These arguments aim to comprehend the moral perspective surrounding abortion by evaluating the "pragmatic worth of the consequences," which are essentially non-moral. They aim to determine the moral value of a voluntary human act based on its negative consequences. These arguments are generally called the consequential arguments and are considered to be morally justifiable abortions. It's worth mentioning that "some widely used arguments are based on consequentialist or utilitarian reasoning."

b) "Intrinsic value based prolife argument"

These arguments are commonly referred to as right-based arguments, which primarily focus on the moral status of the prenatal entity. By asserting that prenatal entities have a right to life and it is immoral to take it away, these arguments aim to establish the moral validity of the act of abortion by examining its "intrinsic moral worth." If the act of the abortion is been permitted then it destroys the worth of the fetus. Essentially the deontologists argue in favor of the right to life of the disabled fetus. So, it is basically placing the rights of the fetus at the similar footing to that of the mother. This kind of argument condemns the ideology that abortion is a private matter and the government should not interfere with it. But the minimal intervention is necessary according to them so as to protect the rights of the unborn.

With regard to the disability selected abortion the prolife thinkers have a different set of arguments against the abortion, for instance: -

1. The diagnosis which has been done by the doctor is not correct.
2. The deformity which is so highlighted with regard to the fetus might be very minute.
3. The children who are suffering from any kind of disability also can be happy as well as prosperous.
4. Handicapped or children with disability are not the social barriers, and so they should not be evaluated as the liabilities that are to be borne by the society and also one have to remember that the one who do not suffer from any disability are not always the assets of the society.
5. Hypocritical attitude of the society towards the disabled group have to be addressed and to be eradicated in its attitude towards handicapped children.
6. The kind of adverse psychological impact one may face due to abortion are more severe and traumatic than that of the abortion because of the disability of the fetus.
7. The arguments which are in favor of aborting the disabled fetus is valid only if it uniformly applies to that of killing the one who is actually born disabled.



The utilitarian argument can be brought into picture to actually evaluate the pain and pleasure in the situation where the abortion is permitted and where it is forbidden. So, the pro life thinkers base their argument by saying that the main consideration must be given to the interest of the fetus. Where the fetus may live happily in the near future, or at least the fetus will have a percent more happiness than that of the pain, and they also take the instance where abortion can be painful if it is committed in the latter stages of the pregnancy.

5.1 THE UNIVERSAL LAW ARGUMENT

“From the age-old traditions, the Kantians have understood the formula for the universal law as means to test the moral adequacy of the agents proposed actions. So essentially if the proposed act can be willed along with that of the universal act, then it is said to be universally permitted act. So, many philosophers have utilized the Kantian notion on universalization to shed light on the most contemporary issues including abortion”.


R.M. Hare, in his article “A Kantian Approach to Abortion,” utilizes the universal principle to argue that a) aborting a fetus due to disability is inherently and morally wrong and b) the universal principle we adopt prohibits abortion at an intuitive level of moral reasoning.”

Hare argument is based on the following lines: -

He tries to once switch into the past and imagine where he can speak to his mother when his mother is considering to abort him. By going with the assumption that he is a “normally happy person” and his existence is equally important. Moreover, by going with the assumption that his mother will not die because of the pregnancy with a disabled fetus. Then under these cases abortion is definitely not correct. So here he says that abortion is correct exceptionally. That is when there is any danger to the life of the mother or when the fetus grows and comes on to this earth, but cannot live happily. Then it might be permissible. “So essentially the Kantian virtue theory as well as the deontology are the basic normative stand points which tend towards the anti abortionists, because according to the Kantian deontologists the right to kill an innocent human being irrespective of any other considerations, can never be universalized”.

5.2 ISSUE WITH THE ARGUMENTS PUT FORTH BY THE PROCHOICE PHILOSOPHERS WITH REGARD TO DISABILITY SELECTED ABORTION

The pro-choice claim is that, abortion is morally acceptable if the prenatal organism is deformed or is suffering from any sort of disability because aborting a disabled fetus is better than the child being born with some kind of physical or the mental disability. So, if abortion is considered to be justified then the deformed or the handicapped prenatal organism is assumed as not a fully developed human being or the person. Accordingly, the argument for killing a disabled prenatal organism can be valid only if the killing of the born people who are disabled is valid”. There are certain instances of woman with disabled children speaking about it. In cases of a child born with Down’s syndrome or chromosomal abnormalities or acute psychological disorders, it is very painful to the parents as the mother has to take extra care and pay more attention towards such a child. It is also an economically unfavourable factor, where an excess amount has to be spent on the well-being of such a childlike for



medical treatment, physiotherapy, combat physical and mental illness, etc. A mother of an eight-year-old disabled boy suffering from cerebral palsy who is completely bed ridden, has been heard of saying that, it is difficult to get him bathed, had to spend sleepless nights, need to maintain specific timings to feed him as he is speechless, always need to carry him as he cannot walk. Every month it is very expensive as they have been spending on his treatment with a hope that he would recover. But still abortion rights cannot be decided based on choice of a woman to exercise her abortion rights discriminating an abled unborn child or a disabled unborn child.


In 1969, there was a debate going on in USA, when a bill which permitted the abortion of the fetus was introduced. At that time, the New York State Legislator and a polio victim stated that, if life should not be brought into this world in an abnormal or malformed way, then life that already exists or becomes abnormal or malformed tomorrow should not live. Furthermore, pro-abortion advocates believe that being born with a disability or abnormality deprives a person of their right to decent living and condemns them to a life of misery. Abortions owing to possible handicaps, on the other hand, deprive the world of unique human beings who are often happy and thrilled to be alive. For instance, Helen Keller, who was born as a deformed person, is the famous American prolific author, lecturer and also member of the communist party of America.

The acceptance of the moral acceptability of abortion in cases of fetal abnormality implies that individuals with abnormalities are considered less valuable than those without. After a disabled child is born, society acknowledges their humanity, as evidenced by the existence of disabled parking and elevators, specialized education programs, and fund-raising events for organizations supporting individuals with disabilities. If we condone abortion based on prenatal deformity, our society would be perceived as hypocritical in its treatment of disabled children born alive. Not all disabled children are social liabilities, nor all non-disabled individuals are considered as social assets. Having a disabled child can be a significant challenge for many, but killing cannot be justified as a means of alleviating this burden.

F. J. Beckwith's point of view: F. J. Beckwith holds the view that while having a disabled child may be burdensome at times but still abortion cannot be justified. No one has the right to ask someone else, whether an unborn child or an adult, to sacrifice their life to relieve us of a burden. He argues that many would find such a world morally reprehensible. He also asserts that disabled children can offer society and their families a chance to demonstrate genuine compassion, love, kindness, and goodwill.

6. CONCLUSION AND SUGGESTIONS

In the Indian context, the abortion is been legalized by the way through of MTP Act, which was introduced in the year 1971. However, this Act had several lacunas. It is essential to understand the basic objective of any legislation before reaching to a conclusion. The foremost objective that one can deduct from the MTP Act is, it provides women quality abortion care, ensures affordability and accessibility to safe abortion. Though there are moderate policies, the women still resort to the unsafe abortion practices. The MTP Act must take into account the possibility of diagnosing a fetal impairment which could later cause serious harm to mental health of a woman and such an exemption must exist throughout the whole pregnancy period because some fetal defects cannot be discovered within the



mandated 20th week of pregnancy. Numerous social, ethical, and financial difficulties surround abortion. Thus, it might be said that a mother's right to end a pregnancy is restricted. The responsibility of protecting both the unborn child's life and the mother's freedom and independence falls on the legal system. Women who become pregnant unexpectedly need to be shown compassion and support from the medical establishment and society, as well as help in locating compassionate abortion alternatives. The judgment delivered by the three judges of the Supreme Court, Justice D Y Chandrachud, Justice A S Bopanna and Justice J B Pardiwala, in a unanimous decision on September 29, 2022, in the case of *X v. the Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*¹⁰, allowed an unmarried woman to terminate her pregnancy. The statutory challenges faced by an unmarried, courageous appellant who wanted to terminate her pregnancy conceived by a consensual relationship had been decided in affirmative. Her unmarried status was one of the impediments apart from 3(2) (b) of the Medical Termination of Pregnancy Act 1971 (MTP Act) and Rule 3 B (c) of the Medical Termination of Pregnancy Rules 2003 (MTP Rules) which establishes termination of Pregnancy only between 20 to 24 weeks and to those categories of women who are survivors of sexual assault, those undergoing a "change in status of relationship" (for instance, divorce or death of spouse), those who are physically challenged or mentally ill and where the fetus is malformed or may suffer from mental or physical abnormalities. The Supreme Court, through its ruling, stated that the term 'women' in legislation is not limited to just cis-gender women or those assigned female at birth who still identify as female. It also encompasses individuals of other gender identities who have the reproductive organs and needs of a female¹¹. This welcoming judgment shows a paradigm shift of recognizing the rights of a woman transgressing the male patriarchy. From the Human Rights perspective also, it is very much required to defend abortion rights of women and advocate for protection of their rights so as to end the stigma and call for reforms to stop control and criminalization of reproduction. According to a well-known Gynecologist Dr. Manjula Anagani, it is women who has to choose their right over their body, teenagers and young women should be encouraged to use safe contraceptives and protect their or reproductive rights. At the same time the state is obliged to sensitize women about the risky self-managed abortion which is not inevitably unsafe, and to provide regulatory options that do not force them to resort to unsafe procedures. If needed, the state must also review, reform, and liberalize its laws to achieve this goal¹².

6.1 RECOMMENDATIONS/ SUGGESTIONS


The disability groups as well as the other progressive groups should take some steps to combat eugenics.

1. All the couples should be priorly informed about the different kinds of prenatal tests, and also should be informed about the information relating to the risks, limitations, exceptions.

¹⁰ *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi and Another*, 2022 SCC OnLine SC 1321.

¹¹ *ibid*

¹² de Londras, F., Cleeve, A., Rodriguez, M.I. *et al.* The impact of provider restrictions on abortion-related outcomes: a synthesis of legal and health evidence. *Reprod Health* **19**, 95 (2022). <https://doi.org/10.1186/s12978-022-01405-x>

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2. The decision with regard to the prenatal test must be given solely to the pregnant women.
 3. The results of prenatal tests must be kept confidential.
 4. Women should have full freedom and the right to proceed with their pregnancy following a prenatal diagnosis, and the legislation should reflect this.
 5. The laws governing abortion should not discriminate based on disability.
 6. Various disability groups should be provided with the information and consulted in order to seek dispel relating to the common misconceptions regarding disability.
 7. Information on financial programmes as well as community-based assistance for families with disadvantaged children has to be advanced.
 8. A list of the principal legislation defending the civil rights of people with disabilities has to be drafted.
 9. Future parents should be allowed to speak to individuals with impairments and their parents.
 10. It should be made mandatory for all working physicians to complete a similar course as part of their continuing education, and for all medical students to take a course on the political and social aspects of disability. Further, genetic counsellors must participate in an activity that allows them to interact with individuals with disabilities in non-medical settings as part of their specialized training.

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