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How mother can be beta noir of her child, especially of unborn child? Woman can give birth to man. This distinct quality places her on both advantageous and disadvantageous stance. She has right to motherhood but here bone of contention is whether she has right to undergo abortion. Here war is between woman, who demands right over her body, and child, until now who has not taken birth.

Abortion means deliberate ending of a pregnancy at an early stage. Abortion is the subject of strong public debate, especially in the US. Some people are in favour of abortion; called pro-choice supporters, they support a woman's right to choose whether to have a baby or not. On the opposite side are the pro-life campaigners, who believe in the right to life of the unborn child and think that abortion is wrong. US law says that abortion is legal during the first stages of pregnancy. The US government has tried to change the laws about abortion, but the changes have been disputed by federal courts and the courts have supported a woman's right to abortion. In **Roe v Wade**, US Supreme Court decided that abortion is allowed by the Constitution. In **Roe v Wade**, a US Supreme Court case (1973) which ended in a decision making it legal to have an abortion, judges said that a state must allow any woman, if she wishes, to have an abortion within the first three months after she becomes pregnant. The decision divided US society and caused a lot of discussion all over the country. And still this issue is a bone of contention there, as it is evident from various activities still going on at various places in U.S. But as far as India is concerned, there are many statues, which deal with this point. Now we enumerate Indian law to ascertain stance from both sides i.e. mother and unborn child. Section 312 of the INDIAN PENAL CODE, 1860 causes miscarriage punishable. It says:

312. **Causing miscarriage.** - whoever causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the women, be punished with imprisonment of either description for a term which may be extend to three years, or with fine, or with both; and if the woman quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation. - A woman who causes herself to miscarry is within the meaning of this section.

Section 312 punishes the person who causes the miscarriage to women. Explanation appended to provision clarifies that women has no right to miscarry herself. The word miscarriage is used synonymously with the word 'abortion'. Section 312 gives the right of motherhood to woman and provides ample protection to this right but simultaneously takes away the right of abortion to the woman; it means she herself has no right over her body. It's not only question of right of woman over her body because a question of right to life of child in woman's womb also arises. There is a clash between right to life of unborn child and right of women over her body i.e. right of abortion. This issue also raises one more issue when life begins- it could be immediately after the egg is fertilized; when the foetus gets a soul; when the foetus can live independently outside the mother, or when the mother delivers the baby. But according to Jeffrey M. Drazen, (Editor-in-Chief of The New England Journal of Medicine) When life begins, is a philosophical question. As aforesaid, in U.S abortion at the beginning of pregnancy is not punishable but there is no distinction in India on such basis except in quantum of punishment: as Section 312 prescribes up to three years imprisonment or fine or both for causing the miscarriage a woman with child and up to seven years and also liable to fine for causing miscarriage to women quick with child. The meaning of the words 'woman with child' simply means a pregnant woman. The moment a women conceives and the gestation period or the pregnancy begins, then a woman is said to be with child. The term quick with child refers to a more advanced stage of pregnancy. Quickening is the perception by a mother that the movement of the foetus has taken place or the embryo has taken place or the embryo has taken a foetal form.

But question arises about the right of unborn child when life of woman is in peril due to that pregnancy. Law can be cruel little bit but not absolutely: as section allows abortion in good faith for the purpose of saving the life of the woman. Right of abortion is further extended by The Medical Termination Of Pregnancy Act. The Statement of Objects and Reasons of The Medical Termination Of Pregnancy Act, 1971 are: The provisions regarding the termination of pregnancy in the Indian Penal Code which were enacted about a century ago were drawn up in keeping with the then British Law on the subject. Abortion was made a crime for which the mother as well as the abortionist could be punished except where it had to be induced in order to save the life of the mother. It has been stated that this very strict law has been observed in the breach in a very large number of cases all over the country. Furthermore, most of these mothers are married women, and are

under no particular necessity to conceal their pregnancy.

2. In recent years, when health services have expanded and hospitals are availed of to the fullest extent by all classes of society, doctors have often been confronted with gravely ill or dying pregnant women whose pregnant uterus have been tampered with, a view to causing an abortion and consequently suffered very severely.

3. There is thus avoidable wastage of the mother's health, strength and, sometimes, life. The proposed measure which seeks to liberalise certain existing provisions relating to termination of pregnancy has been conceived (1) as a health measure when there is danger to the life or risk to physical or mental health of the woman; (2) on humanitarian grounds such as when pregnancy arises from a sex crime like rape or intercourse with lunatic woman, etc., and (3) eugenic grounds Where there is substantial risk that the child, if born, would suffer from deformities and diseases.

So, it obvious The Medical Termination Of Pregnancy Act, 1971 is made in favour of mother and as well as in favour of unborn child. It put forth the principal that death is better than sufferings: as Act allows killing of child in mother's womb, where there is substantial risk that the child, if born, would suffer from deformities and diseases. THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971 allows, on fulfillment of certain conditions, at the initial stage of pregnancy, if continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health or there is substantial risk that if the child born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Section 3 of The Medical Termination Of Pregnancy Act, 1971:

3. When pregnancies may be terminated by registered medical practitioners.-

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860) a registered medical practitioner shall not be guilty of any offence under that code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4) a pregnancy may be terminated by a registered medical practitioner,?

(a) Where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner, is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are, of opinion formed in good faith, that?

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health;

(ii) there is a substantial risk that if the child were born it would be suffer form such physical or mental abnormalities as to be seriously handicapped.

Explanation 1.- Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2. - Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

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

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or who having attained the age of eighteen years is a mentally ill person, shall be terminated except with the consent in writing of her guardian.

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

Rape victims are empowered to undergo abortion under the said Act to prevent further worsening of trauma. Explanation appended to Section 3 (2) tells that the married couple is vested with right to get rid of unwanted pregnancy if it takes place due to failure of any contraceptive. But any exemption under the last said can be availed only on fulfilling of conditions and procedure laid down in section 3, section 4 and rules & regulations made under the act. Section 4 enumerates the places where pregnancy can be terminated. It says:4. Place where pregnancy may be terminated. - No termination of pregnancy shall be made in accordance with this act at any place other than-

(a) a hospital established or maintained by government, or

(b) a place for the time being approved for the purpose of this act by government or a District Level Committee constitute by that government with the Chief Medical Officer or District Health Officer as the Chairperson of the said committee.

Provided that the District Level Committee shall not consists of not less than three or not more than five members including the Chairperson, as the Government may specify from time to time.

Section 312 of IPC allows abortion in good faith for saving the life of women. Indian Penal Code does not describe any qualification for abortionist but Section 3 of The Medical Termination Of Pregnancy Act, 1971 tells that abortion can be done by registered medical practitioner only. Registered medical practitioner is defined under section 2 (d) of act which says:

2 (d) "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

Abortionist has also to fulfill the conditions experience or training in gynaecology and obstetrics as may be prescribed by rules made under the Act. Rule 4 of The Medical Termination of Pregnancy Rules, 2003 lays down the same which is as follow:

4. experience and training under clause (d) of section 2.- for the purpose of clause (d) of section 2, a registered medical practitioner shall have one or more of the following experience or training in gynaecology and obstetrics, namely:-

(a) in the case of a medical practitioner, who was registered in a state medical register immediately before the commencement of the Act, experience in the practice of gynaecology and obstetrics for a period of not less than three years

(b) in the case of a medical practitioner, who is registered in a State Medical Register:-

(i) if he has completed six months of house surgency in gynaecology and obstetrics; or

(ii) unless the following facilities are provided therein, if he had experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology; or

(c) if he has assisted a registered medical practitioner in the performance of twenty five cases of medical termination of pregnancy of which at least five have performed independently in a hospital established or maintained, or a training institute approved for this purpose by government.

(i) This training would enable the registered medical practitioner (RMP) to do only 1st trimester terminations (up to 12 weeks of gestation).

(ii) For terminations up to twenty weeks the experience or training as prescribed under sub-rules (a), (b) and (d) shall apply.

(d) in case of a medical practitioner who has been registered in a state medical register and who holds a post-graduate degree or diploma in gynaecology and obstetrics, the experience or training gained during the course of such degree or diploma.

The Medical Termination of Pregnancy Act, 1971 does not prescribe any punishment for women but it does not spare the person who performs abortion in violation of provisions of the Act. Section 5 says:

5. Sections 3 and 4 when not apply.-(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that code, and that code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) any person being a owner of a place which is not approved under clause (b) of section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.- For the purposes of this Section, the expression "owner" in relation to a place means any person who is administrative head and otherwise responsible for working or maintenance of a hospital or place, by whatever name called, when pregnancy may be terminated under the Act.

Explanation 2.- For the purposes of this Section, so much of the provisions of clause (d) of section 2 as relate to the possession, by a registered medical practitioner of experience or training in gynaecology and obstetrics shall not apply.

Section 5 punishes the abortionist but it also put woman on peril because nobody would like to take risk of prosecution and in most of cases he/she will avoid the performance. But some relief is given to RMPS, as section 8 of Act says:

8. Protection of action taken in good faith. - No suit or other legal proceedings shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

Medical Termination of Pregnancy Regulations, 2003, enacted by virtue of section 7 of the Act, require doctors to fulfill some more conditions. In India abortion take place not for exercising the right over body but to get rid of girl child. Hatred for girl child in India does not mandate any special explanation here: as everybody would be acquainted with the stance. The national figure of 933 women against 1,000 men (2001 census) further substantiates the same. In some states like Punjab, which is also considered as one of the most prosperous states, conditions are worst: as there are 874 women against 1000 men. In India the prevailing practice is that after determining the sex through modern techniques if the child is found to be girl then she is killed in mother's womb only. That's why unborn child, especially girl child, is given special protection through Pre- Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 1994. The Act prohibits the sex determination due to which unborn girl child can be protected.

Female foeticide is so rampant in India due to which woman is not bereft of right to abortion only but also prevents from knowing sex of child in womb: as Pre- Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 1994 prohibit pre-natal test. Abortion is prohibited in almost all the countries because no body has right to take anybody else's life, even to his/her mother. As far question of relevance of anti-abortion law in today's India, it is not difficult to say that anti-abortion laws are need of the hour because it exercises the check over female foeticide and declining sex ratio. No doubt there can be arguments in favour of women for his right over her body but there is no room for advancing such arguments in prevailing conditions in India.

Evil of female foeticide is not creation of tomorrow but lies in root of Indian society and worsening day by day due to which Indian judiciary has also to come forward to control practice. In **Vinod Soni & Anr. v. Union of India** Mumbai high court rejected the argument of unconstitutionality of Pre- Conception And Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act, 1994, on the basis of right to privacy. It is noteworthy to mention that in *Roe v. Wade*, the apex court of U.S declared the anti-abortion law unconstitutional on the basis of right to privacy. Reversely Indian apex court mounts the pressure on govt. for strict application of anti-abortion laws. Due to hatred for girl child, the right of woman over her body does not hold much weight in India. So, the Scale of Justice in India tips in favour of unborn child.

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