

MOTHER AND THE FETUS: A SOCIO- LEGAL CONFLICT

Ms.Asween Kaur*

Abstract

“Killing a Kshatriya [knight] or a Vaishya [Merchant] engaged in sacrifice, a menstruating woman, a pregnant women...[and]..the embryo (even) of a stranger is tantamount to killing a Brahmin [Priest].” – Visnudharmasutra

Women in the Indian society have always been suppressed. Their rights are often ignored. They don't even have the right of self-determination in regards to their body and hence are abstained from aborting the child out of societal pressures and state's compulsive laws. Right to abortion of mother is in conflict with right to life of the fetus who is a potential being and is capable of possessing rights as his or her mother.

Though state laws recognize the right to abortion but it restricts it to 20 weeks of gestation period. With the changing ideology and broadening of mindset of the people, legislature is coming up with new laws which tend to bring about rightful balance between rights of both mother and the unborn. Judiciary too is making efforts to make best possible use of judicial activism to safeguard the rights of the people, declaring oppressive laws to be unconstitutional.

Abortion has been a controversial issue on religious, moral, logical, ethical, practical, legal and political point. This research paper analyses and explains the Indian perspective of abortion, positive and negative approach towards it and deals with questions as whether abortion should be permitted, encouraged, restricted or severely repressed. It discusses and comments upon the existing laws and lastly suggests certain measures in the best interest of the society.

* Student, 2nd Year, B.A.LL.B., Army Institute of Law, Mohali,Punjab.

Introduction

Since Rig Vedic period, position of women has been deteriorating. She is always considered to be a second sex and is given unequal treatment. She doesn't enjoy as much autonomy as men do. Though she is governed by the same laws of the country however her rights are still restricted. She can't even decide about important decisions of her life inter alia are abortion of fetus growing in her womb.

An abortion is the removal or expulsion of an embryo or the fetus from the uterus, resulting in, or caused by, its death.¹ It can also be referred as miscarriage or induced termination of pregnancy within twenty weeks of gestation. This can occur spontaneously as a miscarriage, or can be artificially induced through chemical, surgical or other means. Mother's health conditions, legal sanctions, and morality are to be kept in mind while carrying out abortion.

Initially, the right to abortion was not available because of the moral principles and ethics existing in the society. The termination of pregnancy was equated with murder of the fetus and was considered 'a sin'. After the decision of *Roe v. Wade*², it was permitted by law.

There are different views of scholars regarding right to abortion; some of the scholars seriously condemn it calling it murder deserving to be punished under Section 302 of Indian Penal Code while other³ consider it to be a just and fair right which all the women should have. They believe that it is the woman who should be the sole captain of her body and should be permitted to independently do anything to her body (bodily rights) which her soul permits. Neither society nor the state should restrict her freedom.

¹ http://www.legalserviceindia.com/articles/adp_tion.htm retrieved on 6/8/15.

² 1973 U.S. LEXIS 159. ROE V. WADES: it is a politically significant US Supreme court decision which had divided the nation into "pro-choice"(also called "pro-coercion" and "pro-death" as they favoured abortion) and "pro-life"(who were against abortion and favoured saving fetus's life). It was held that laws against abortion violate women's right to privacy. Jone Roe, the plaintiff wanted to terminate her pregnancy which was the result of rape. The Court ruled out that the state can't restrict woman's right to abortion during 1st trimester however can regulate the abortion procedure during the 2nd trimester "in ways which are reasonably related maternal health," and can completely restrict in the 3rd trimester.

³ Dr. NikalDatar etc. was in favour of abortion till 28 weeks.

International Perspective relating to ‘The Right to Abortion’

International Conventions

Article 1 of the American Declaration of Rights and Duties of Man and Inter American Commission of Human Rights permits abortion till the end of first trimester. As per Article 6(1) of the International Covenant on Civil and Political Rights⁴, right to life is protected from the moment of its conception. Article 2 of the European Convention on Human Rights⁵, Article 4 of the African Charter of Human and People’s Right⁶, Article 7 of the Canadian Charter⁷, Article 3 of Universal Declaration of Human Rights, 1948⁸ (adopted by United Nations General Assembly) safeguards right to life of every person.

The World Health Organization recognizes ‘reproductive rights’ (also involves right to legal and safe abortion) which are available to all women. These are basic right of all the couples. Individuals are free to decide the number, spacing and timing of their children. They have the right to attain the highest standard of sexual and reproductive health.

Statutes

Partial-Birth Abortion Ban Act of 2003 (US Law) prohibits late-term abortion; Abortion Act, 1967 of the UK in its Article 2 doesn’t confer an absolute right to life to the unborn, Unborn Victims of Violence Act of 2004⁹ regards ‘child in utero’ as ‘member of homo sapiens family’ so as to possess right to life.

⁴ “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

⁵ Art 2 of European convention on Human Rights: “Everyone’s right to life shall be protected by law.”

⁶ “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

⁷ “Everyone has the right to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

⁸ “Everyone has the right to life, liberty and security of person.”

⁹ As per US Law(before 2002 act), when a soldier serving at the Helemano Military Reservation named Sgt. Timothy Ward was convicted in January 2000 of murder of his pregnant wife, Bianca Ward, no charges were brought to the harm done to their unborn child.(United States v. Staff Sergeant Timothy Ward.) Similarly, when Ruth Croston was five months pregnant on April 21, 1998, was killed by her estranged husband, Reginald Anthony Falice, at a Charlotte, North Carolina, no charges were brought for the killing of the unborn baby girl.(Falice

Precedents

Abortion is permitted where continuance of pregnancy involves risk,¹⁰ certain rules to followed while performing abortion (includes obtaining consent etc.)¹¹, fetus was not a person¹².

Indian Perspective

Abortion as a right was unknown in ancient India. It was severely condemned by Vedic, Upanishadic, the later puranic and smriti literature. Arguments on morality and legality tend to collide in this regards. Before the passing of the Medical Termination of Pregnancy Act (on 10th August, 1971), abortion was considered to be illegal. The government, through this statute has tried to balance the state's legitimate interests with the individual's constitutional rights.

Section 3 of the Medical Termination of Pregnancy (MTP) Act allows the termination of pregnancy under following conditions:

1. Eugenic indications: There is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.¹³
2. Humanitarian indications: When pregnancy arises from sex crime like rape ¹⁴(marital rape not included) or intercourse with a lunatic woman, etc.
3. Therapeutic and Environmental indications: Women whose physical and/or mental health would be endangered by the pregnancy.¹⁵

v. United States of America et al). However, after the passing of this Act, their right to life was recognized.

¹⁰ Paton Vs. United Kingdom (1980)3 EHRR 408.

¹¹ Planned Parenthood v. Casey 505 U.S. 833 (1992)

¹² *Tremly v. Daigle* [1989] 2 S.C.R. 530, *R. v. Sullivan* [1991] 1 S.C.R. 489.

¹³ Section 3(2) (b-ii) of MTP Act, 1971: "there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped."

¹⁴ Explanation I to Section 3(2) of MTP Act, 1971: "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." In *D. Rajeswari vs. State Of Tamil Nadu and Others* (an unmarried girl of 18 years requested the court to allow her to terminate her unwanted pregnancy of a child of 3 months which has caused her great anguish and mental illness, since the pregnancy was the result of a rape. The Court granted the permission to terminate her pregnancy).

¹⁵ Section 3(2) (b-i) of MTP Act, 1971: "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".

4. Social indications: Pregnancies that are a result of failure of any contraceptive device used by husband or wife to limit the number of children.¹⁶
5. Pregnancies in unmarried girls under the age of eighteen; with the consent of a guardian.¹⁷

Maximum time limit for terminating the pregnancy under above stated grounds is twenty weeks (section 3(2) (b)). This time limit is considered suitable because lower limit of viability is approximately five months of gestational period. It is during 20-21st week that the fetus starts showing movements. Therefore till that period, the fetus is considered non- viable¹⁸. 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.¹⁹

The opinion of not less than two registered medical practitioner²⁰, shall be required in case the period of pregnancy exceeds 12 weeks and but not 20 weeks²¹ (section 3(2)(b)), however this can

¹⁶ Explanation II to section 3(2) of MTP Act, 1971: "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".

¹⁷ Section 3(4)(a) of MTP Act, 1971: "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." *Dr. Nisha Malviya and Anr. Vs. State Of M.P* 2000 CriLJ 671 (3 accused initially committed rape on 12 years girl and later got her pregnancy terminated without the consent of her or her mother therefore was held guilty). *Shri Bhagwan Katariya and Others vs. State of M.P* 2001 (4) MPHT 20 CG: (The pregnancy was terminated without women's consent. Court was of the view that in the present case, a permanent scar has been carved on the heart and soul of the woman by depriving her of her child. Therefore the doctor was held liable).

¹⁸ Non-viable means not capable of living, growing and developing on one's own.

¹⁹ Section 4 of MTP Act, 1971.

²⁰ Section 2(d) of MTP Act, 1971: "registered medical practitioner" means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 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.

²¹ *Nikita Mehta Case*, (Nikita Mehta was 25th week pregnant when she was informed by doctors that the fetus had a congenital heart block and that the child would be born with severe congenital deformities. The Bombay HC disallowed abortion of the fetus after observing that the plea to terminate the

be ignored where there is immediate need to terminate the pregnancy (section 5(1)).

It is the two registered medical practitioners to decide whether pregnancy can be terminated or not. Hence, MTP Act doesn't permit abortion as an absolute right.

Bright side of Abortion

Firstly, it is believed that when pregnancy is harmful to the life of the woman, it should be avoided as 'Right to life' of mother can't be sacrificed for the sake of someone who is just a potential human and can't exactly be called a member of Homo sapiens sapiens family. In case there is risk to the life and security of both, it is the life of mother which is given an upper edge.

Secondly, when she doesn't have cordial relations with her husband and her marriage is at the verge of termination, abortion serves a lot of good to the woman whose future would otherwise have worst affected (would affect future proposals for marriage) in case she had to bear the child.

Thirdly, it would play a vital role in a situation of 'fetus in fetu' where an undeveloped fetus grows as parasite in the womb of a baby or his twin. Such a fetus is incapable of independent existence due to development of serious bodily defects. It also poses threat to the host twin.

Fourthly, it permits woman to freely and responsibly decide as to the number and spacing of her children which will in longer run help to control population growth.

Re-approach towards MTP Act

The very fact that the total fertility rate in India decreased from an average of 3.1 children per woman in 2001 to 2.7 in 2009, highlights the importance of abortion.

1. Biological perspective

1.1 One of the characteristics of a 'person' is 'to be able to breathe properly on his own'. It is from Week 32 that the Baby

pregnancy was equivalent to mercy killing. However, Nikita later had a miscarriage).

practices breathing. So restricting the right to abort beyond 20 weeks holds no logic as he is yet not a possessor of “human rights”²².

- 1.2 Life begins at the stage when the fetus could survive independently outside the womb or when the placenta separates from the womb and the fetus has to rely on its own resources to keep alive and has independent living.

2. Economical perspective

When Family is not financially sound enough to welcome an addition, yet under the compulsion of law they can't terminate pregnancy.

3. Emotional perspective

- 3.1 If the pregnancy is result of forceful sexual intercourse, the future offspring would remind the mother of the pain and she will accept him/her out of frustration and pressure of law rather than having any love for the offspring.
- 3.2 Fathers²³ and husbands²⁴ find themselves powerless having no say in regards to pregnancy of their daughter or wife respectively.

4. Social perspective

- 4.1 Pregnant women are recommended dietary guidelines such as the consumption of fish²⁵, alcohol are suggested to be avoided. Hence, continuing pregnancy restricts her freedom and affects her life style curtailing her freedom of choice.
- 4.2 Parents may abandon such child, which will put his future at stake. He may have to live under poor condition in the orphanages, or may resort to begging, or involve in several crime (like theft, murder etc.) to keep his body and soul together. The child so born is also more vulnerable to physical, sexual and emotional abuse.
- 4.3 An unmarried woman, if forced to have child, may be subjected to taunts, humiliation which will bring disgrace to

²² Human rights are those rights which are inherent to each and every individual without discrimination of any type.

²³ Under MTP, father's consent is essential when the daughter decide to terminate her pregnancy and not when she wants to continue her pregnancy.

²⁴ *Saty v. Shri Ram* AIR 1983 Punj&Har 252: held that abortion without the consent of husband amounts to cruelty.

²⁵ Consumption of fish contaminated with methyl mercury through industrial pollution may result in neurological disorders in children.

her and ultimately the proposal of marriage for her will decline. This mental cruelty may affect her health.

- 4.4 In Indian society, it is woman who is expected to be the care taker of the child therefore she has to cut off from her dreams, ambitions, passions and job for upbringing the child whom she even doesn't want.

5. Historical perspective

In ancient times, abortion and infanticide were considered as a mode of family planning, gender selection, population control, and the property rights of the patriarch.

6. Legal perspective

- 6.1 Women's sovereignty over her body is affected by this Act. Women should have right to self-determination in regards to her body. The decision in regards to continuance or termination of pregnancy should be left entirely on her. Neither her husband nor her family members should compel her in anyway.
- 6.2 Woman's 'right to bodily integrity' overweighs any rights that the fetus, who is just a special aggregation of cells with a potential for independent life.
- 6.3 Constitutional perspective: Constitution, the heart and soul of a country, also guarantees certain rights to the women (who may or may not be future mother).
- I. Preamble²⁶- "we the people"-this acknowledges the sovereignty of people and expects government not to make unnecessary interference.
 - II. Abortion laws are unreasonable and violate the principle of equality provided under Article 14²⁷ of the constitution. She too like other individuals has full right to do what please her and decide good and bad for her.

²⁶ WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

²⁷ Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- III. Article 19(1) (a)²⁸: She can express her intention either by continuing or by terminating her pregnancy.
- IV. Article 19 (1) (g)²⁹: Right to work.
- V. Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

This right is protected not only from executive action but also from legislative action.³⁰This is an inalienable right. Though this right is subjected to certain restrictions, but these restrictions shouldn't be arbitrary or oppressive. Forcing a woman to continue pregnancy against her will is oppressive and hence doesn't come under the ambit of reasonable restriction³¹.

- a. Right to privacy³²: Right to life doesn't mean to have animal existence rather to have full control over one's body. It has the power to restrict the right under Article 19 (1)(a). A female who is a victim of a sexual assault, kidnapping, or a like offence should not be subjected to indignity by publishing or making more and more people know of the same as it violates her right to privacy. The word 'publishing' doesn't only mean publishing in print or through electronic means rather includes making known to the people of the act. Hence, bearing of a child by unmarried woman amounts to publishing about the wrong happened to her which ultimately has negative impact on the victim.
- b. Right to meaningful, complete and dignified life³³.
- c. Right to make free choice.
- d. Neither does the fetus have such right till the end of Gestation period (about 259 to 280 days).

7. Consequential Perspective

²⁸ All citizens have right to freedom of speech and expression. (Right to freedom of speech and expression means the right to express one's own views, convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode which may include expression of one's idea through any communicable medium or visible representation, such as, gesture, signs and the like).

²⁹ Freedom to practice any profession, or to carry on any occupation, trade or business.

³⁰ *Maneka Gandhi vs Union Of India* AIR 1978 SC 597.

³¹ *Javed and others v. State of Haryana* AIR 2003 SC 3057.

³² *Kharak Singh v. State of U.P.* AIR 1963 SC 1295.

³³ *S.S. Ahluwalia vs Union Of India* 2002 (6) BomCR 157, *Maneka Gandhi vs Union. Of India* 1978 SCR (2) 621.

- 7.1 If forced to have child, she may either kill herself or kill the child out of frustration. For e.g. Brenda Drummond, a lady of 29 years of Carleton Place, Ontario tried to abort her fetus during 9th month of her pregnancy in 1996 by introducing a pellet gun in her vagina and shooting her fetus in the head.
- 7.2 Too much of restrictions and interference by law results in people going against the principles of law and violating it. They lose respect and fear of law. In case there is judicial overreach, people who want to terminate pregnancy may use unfair practices such as giving bribe to the doctors, going for 'back-street abortion' by Dhais (traditional unqualified midwives) through the use of 'abortion stick' or introducing irritating juice into the vagina etc., using drugs or mechanical violence which is highly risky to women's health.
- 7.3 Mother suffering from AIDS, acute hepatitis, Rh incompatibility and chromosomal aberrations has chances of transferring the disease or in any other manner affecting the development of child.

Indian statute doesn't pay heed to these important points. However, it can be noted that the MTP Act doesn't protect the right of the unborn. It is for the protection of mother that this Act has been introduced.

Dark Side of Abortion

Abortion is the right that women demands in interest of her complete autonomy over her body. She is ready to sacrifice the life of another individual for such petty thing. Killing of fetus is similar to killing any other individual (i.e. homicide). He, being a 'potential human being'³⁴, will come under the ambit of 'person' in sec 300 of IPC or as per Explanation 3 to section 299 of IPC, which regards causing of death in mother's womb as culpable homicide if any part of the child has been brought forth, though the child may not have breathed or been completely born. Moreover, women too suffer from emotional trauma, in most of the cases, after abortion. It has been scientifically proven that getting the pregnancy terminated makes women more vulnerable to breast cancer in the later life. There are chances of damage or infection to the uterus resulting in her becoming infertile (which is regarded as a stigma in Indian society). Her menstrual cycle may

³⁴ Potential human being is an entity who is not currently a person but is capable of developing into one if he is given certain biological and/or technically possible conditions including availability of womb.

also be disturbed. Hence, abortion is not only detrimental to the would-be-child but also to the woman.

This has a negative impact on the society too as by aborting a fetus with disability, a wrong message is conveyed to the community that the life of disabled is not worth living and rather than opting for such a life, it is preferable to opt for death. Even on moral and religious grounds, it should be condemned. In Rig Veda Samhita Vishnu is called “protector of the child-to-be”, implying that the fetus was deserving of even divine reverence.³⁵ The Indian society, its customs and norms never favoured sacrifice of a fetus for ‘enjoyment and comfort’ sake. Indian society regards fetus or children as gift of god. The child, especially the son, was considered to be ‘old age insurance’. Marriage, one of the most respected institutions, became popular mainly for the sake of bearing offspring and discharging debts to the pita (father), devta (god) and sages.

Intensification of son preference in the existing patriarchal society, has led to ‘sex-selective abortion’. In India, there is continuous decline in the sex ratio from 972 women per 1000 men in 1901 to 933 women per 1000 men in 2001. Girls are considered to be burden on the family and are therefore given death in the womb itself (sometimes even against mother’s consent). Scientific advancements have made it possible to determine the sex of the fetus through Pre-natal diagnostic techniques like Medical Ultrasonography, amniocentesis etc.

Legal viewpoint

1. Constitution

- 1.1 Article 14/Right to Equality: Fetus possesses equal and similar rights as mother does. So, rights of both should be kept at equal pedestal.
- 1.2 Article 21/ Right to life

1.2.1 RIGHT TO LIFE OF FETUS

Fetus is never anything other than a human from the time of conception. It is the moment of fertilization which should be considered as the beginning of human life, as at this point the fertilized egg begins to develop into a separate and

³⁵ <http://www.hinduhumanrights.info/hindu-religious-quotes-on-abortion/>

unique human being, moreover the fertilized egg contains full genetic code (46 chromosomes) of a Homo sapien.

As per 2003-2005 report, it was found that chances of survival of fetus of 23 weeks was 27.5%, of 24-25 weeks was 60% and of 26-27 weeks was 90%. With scientific advancement, the survival chances have enhanced. Hence, there are great chances of fetus living a healthy life outside the body of mother even from 23 weeks onwards therefore the time period fixed by MTP of 20 weeks is just and shouldn't be extended.

This right includes right to food, water, breath, decent environment, shelter, proper conditions of living, health care, education, reputation, personal security etc. Therefore, the fetus in the body of mother has the right to breathe and to get nutrition from the body of mother.

There are two components of the right to bodily integrity and liberty that are choice and consent. Once the state designates the fetus as an entity separate from the woman, her right to terminate pregnancy stems not only from her right to make a choice about her liberty, but more fundamentally, from her right to consent to how the fetus, as another entity, should affect her body and liberty.

1.2.2 Right to Life of Mother or Woman: The right to life of a person is not an absolute right and is restricted by 'procedure established by law'. India being a welfare state can't sacrifice the interest of one being at the cost of other.

1.3 Article 19(6): It was observed in A.K. Gopalan's case³⁶ that, "man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals." The guarantee of each and every right is restricted by the constitution itself by conferring the state with the power to impose reasonable restrictions in larger interest of the community. Whether restrictions are reasonable or not is decided by the court on the basis of merits.

2. Indian Penal Code, 1860: It declared induced abortion as illegal (section 312 to 316) and described it as purposely causing miscarriage. The doctor so performing abortion was to be incarcerated for three years or fined or both and the woman

³⁶ A.K. Gopalan v. State of Madras, AIR 1951 SC 21.

- undergoing abortion could be imprisoned up to seven years and also be charged with additional fine except in case where pregnancy was terminated to save her life.
3. Hindu Succession Act, 1956: Section 20 says that a child who is in womb at the time of death of intestate and is subsequently born alive shall have the right to inherit to the intestate. Hence, it acknowledges unborn as a complete individual.
 4. Torts: Fetus is entitled to bring an action under torts.
 5. Paragraph 3 of the Code of Ethics of the Medical Council of India says: I will maintain the utmost respect for human life from the time of conception.
 6. Fetus like other individuals has right to sue.

Recent Advancement

The MTP Act which came into effect from 1 April 1972 and was later amended in the years 1975 and 2002. Medical experts believe that the period of 20 years is too small a window, especially because it is not before 18 weeks that the fetal abnormalities show up.

The draft Medical Termination of Pregnancy (Amendment) Bill, 2014 provides for abortion even beyond 20 weeks under defined conditions. This decision to allow abortion between 20 and 24 weeks can be taken “in good faith” by a healthcare provider if, among other conditions, the pregnancy involves substantial risks to the mother or child, or if it is caused by rape.

Conclusion

Criminal abortion in India is mostly performed by widows, who are otherwise prevented from remarrying by the rigid social custom or by unmarried women to get rid of the product of illicit intercourse.

I believe that India being a democratic state should give full freedom to the individuals rather than dictating its people, who are the real sovereign, under the garb of welfare state. The legislative body though is entitled to make laws for the governance of the country however it should not go to the extent of restricting and withdrawing all our freedom.

It is a woman’s personal life where she should be left free to decide for herself. It should be left to the woman as to what she

has to do to her body. Whether she is interested to give birth or not, should entirely be left on her without any pressure from husband, in-laws or the state. Terminating pregnancy has just the probability of causing harm however if the pregnancy is compelled to be continued that will, for sure, detrimentally affect the woman, the child so born and the people connected therewith.

MTP, which was introduced to check maternal mortality, would rather lead to the increase in the same because of woman being forced by law, having no other options than to go for back- street unsafe abortions which pose greater risk to her health.

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection), 2003 should be strictly enforced so that providing freedom of abortion to the individual nowhere affects the sex- ratio.

A woman should not be compelled to sacrifice her happiness, reputation in the society etc. for the cost an unwanted and non-existent being. Woman, by aborting, are not depriving a person of life rather refusing to award the same so it doesn't even come within the ambit of murder.

Judicial activism is playing a positive role by allowing abortion even beyond the restricted time period. Recently, a 14 years Gujarat rape victim who was refused abortion of 24 weeks fetus by Gujarat High Court (24th July, 2015), was permitted abortion by Supreme Court (25th week by then) keeping the health of the petitioner in mind too (clinical psychologist were appointed on the bench for assisting the judge).

However in cases where the child is born even after abortion, mother may lose her right as then the child so born will be capable of holding same rights as mother.