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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

IMPACTS, EFFECT AND RIGHTS-RELATED
IMPLICATIONS OF MAKING ABORTION AVAILABLE ON
THE REQUEST OF THE WOMEN, GIRL OR ANY
PREGNANT PERSON, WITH NO ADDITIONAL
RESTRICTIONS

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ABSTRACT

This paper aims at analysing the perspective of modern Indian legal system on abortion rights. Abortion means to end the life of a fetus when it is concluded that it will not be able to survive outside the mother's womb. Providing women the right to abortion is a basic civil right which is also enshrined under the Indian Constitution under Article 21, right to life and personal liberty. Abortion rights involve both moral and legal principles, life and death, and the right to one's personal body. The rights were further liberalised after the introduction of the Medical termination of pregnancy Act, 1971. Whether the woman has the right to terminate the pregnancy or whether the fetus has the right to life has always been a contentious topic in the international forum. While India has recently amended the act so as to allow for the termination up to 24 weeks of pregnancy, the right to termination still remains tortuous. This paper ultimately aims at proving that women's rights are to be considered more important especially when it comes to abortion rights, as due to the legal implications women often opt for unsafe and illegal abortions leading to a wide spread death of women all around the globe. Over restrictive laws on abortion should be removed and women's rights should be prioritized as it is the pro choice that matters.

KEYWORDS:

Abortion rights, Article 21, Indian legal system, Medical Termination of Pregnancy Act, fetus right to life, prochoice, reproductive rights.

1. INTRODUCTION

Abortion means the deliberate termination of a human pregnancy, most often performed during the first 28 weeks of pregnancy. Abortion has been prevalent all around the world, while each part of the world had their own ways of regulating abortion laws. In ancient times, laws pertaining to Smriti, Upanishads, Vedic were all given importance and accordingly followed. All the ancient literature opposed abortion, and those who performed were severely punished, along with the priest or the medical practitioner who helped the women get abortions.¹ Despite all the restrictions, abortion was performed when it was necessary to save the life of the women by employing various methods like labor fasting, use of sharp tools, and consumption of concoctions that induce abortion. While early abortions were allowed and considered moral, abortion of a full grown fetus was considered an action equivalent to murder and were criminalized. Abortion, being a common practice in America during the early 19th century, was criminalised after the 1940s. This evolution was not due to religious or moral movements but can be traced back to the AMA (American Medical Association) movement, where, due to the change in the attitude of the medical industry, physicians were seeking to professionalize medicine. Thus the abortion rights were shaped according to the medical practise, societal norms and prejudice in America, which in turn became a trend all over the globe.

Balancing the right to abortion and fetal interest:

The right enshrined under Article 21, which states provides for the right to life and personal liberty, is the root for the origin of the right to have abortions, regardless of caste, sex, religion, or region; therefore, the right to abortion can be regarded as a basic and fundamental right exercised by women. The question of the legal status of the fetus still remains a question of rage as to whether the woman should be given the right to terminate their pregnancy or whether the fetus has the right to life. This can be further defined with the help of Ronald Dworkin's theory about the stages of fetus development. The balance of women's right to freedom and the fetus's right to live has always been a dilemma. According to Ronald Dworkin, by the end of the 20-week period of gestation, the brain development of the fetus will attain such a stage of development where it starts feeling pain and is now a living being capable of developing into a fully grown human being. And therefore, abortion after 20 to 24 weeks will be considered a crime amounting to murder. A fetus is yet to be considered a legal person except under certain

¹ Taruna Nayyar, Abortion Rights in the 21st Century: An Examination of the Medical Termination of Pregnancy Act, 1971, 6 Int'l J.L. Mgmt. & Human. 2973, 2973-80 (2023).

conditions, which mainly involve property rights. He further condones that abortion should be opted in the best interest of the fetus until the third trimester, when the fetus lacks brain development and therefore cannot feel pain since it is inanimate and the fetus lacks interest in itself. In order to determine the fetus's right to life, the very basic principle of interest can be considered. Since a fetus is not a living person capable of determining their interests, in his opinion the interests of the mother who is carrying and nourishing her child in her uterus should be considered as the interests of the fetus.

Pro-choice theory and abortion rights:

The Status of the Fetus, Personhood: A Question central to the abortion debate is that of the moral status of the fetus. According to the pro-choice theory life begins at the stage of conception and therefore the underdeveloped fetus has the right to life, and thus abortion of the fetus is considered as a criminal act equivalent to murder. Pro-choice advocates that life begins not at the stage of conception but after a gradual development of the fetus where it will be able to survive outside the mother's womb. The issue with pro-choice theory is that it does provide women the right to carry on with the pregnancy or end it. It therefore infringes the women's personal and bodily autonomy and liberty to terminate unwanted pregnancy.² The tension between the fetus's right to life and the woman's right to control her body creates a vicious cycle and therefore remaining as a burden upon the legal systems to decide with this toilsome situation. Balancing Rights: Abortion laws often attempt to balance the rights of the pregnant individual with the rights of the unborn fetus. In the United States, for example, this has led to landmark cases such as *Roe v. Wade* (1973), which recognized a constitutional right to privacy so women may have the decision-making capability about whether or not they carry a pregnancy to term without undue governmental restrictions. But later, The United states supreme court in the case, *Dobbs v. Jackson Women's Health Organization*, declared *Roe v. Wade* as unconstitutional and again sent the decision-making of abortion back to individual states, and with this action, political and legal fights for abortion have gotten more intense.

Gender Equality and feminist perspective on unsafe abortion methods:

Abortion rights granted at the request of the women are considered as a heart of gender equality

² Nandini S. Sohoni, *Life versus Death: Law of Abortion and Developments in Medical Termination of Pregnancy Act*, 2 Indian J.L. & Legal Res. 1, 1-12 (2021).

for many, in this regard, the liberty to choose whether to continue with the pregnancy or not, allows women to have equal participation in societal decision making. Such perspectives view restrictions on abortion as offensive against women's rights and bodily autonomy. The other theory involves the feminist's perspective, anti-abortion policies are a form of patriarchal control, there to restrict women's rights and to force back to traditional mode of motherhood. In general, pro-choice movements tend to be imbued with progressive or liberal ideologies support for gender equality, reproductive freedom, and separation of church and state. Pro-life movements tend to ally with conservative, religious, and family-centred values under the guise of traditional morality and protection of unborn life. When abortion is not granted at the request of the women, most women opt for illegal or unsafe means of abortion while trying to terminate unwanted pregnancies. The medical termination of the Pregnancy Act came into force in 1971 in India. Abortion rights are complicated as they medley with fundamental rights given by the Indian constitution, especially the "right to life" Article 21 of the constitution clearly declares that the right to life and personal liberty cannot be curtailed unless it is established by procedure established by law. Every person, man or woman, is subjected to fundamental rights, with the limitation that has been placed by the MRT Act, which states that abortion has to be done within a period of 20 to 24 weeks from the formation of the fetus.³ This violates the rights of women from having a choice as to whether to continue with the pregnancy and also, in several scenarios, being forced to continue with the pregnancy even after knowing that the fetus inside might be physically or mentally challenged. Another con is that women are forced to compromise with their health due to the 20- to 24-week restriction imposed by the MRT Act. This explains the various risks in abortion, which range from injury, infection, and sometimes death. The World Health Organization has stated that unsafe abortions are a major source of maternal deaths around the world. This adds further layers of complexity to the debate as pro-choicers argue for safe and legal access to abortions in order to avoid un-safe procedures and reduce maternal mortality.

Pro-life theory and abortion rights:

Anti-abortionists or the "pro-life" movement use many legal, political, cultural, and social strategies to reduce or eliminate women's access to an abortion. These moves include changing legislation, judicial opinions, public attitudes, and even medical practice. Perhaps the most

³ Janees Rafuiq & Ramesh Kumar, *Medical Termination of Pregnancy in the Light of Human Rights*, 4 Indian J.L. & Legal Rsch. 1, 1-14 (2022).

important legislative tool anti-abortion activists use to limit access to abortion is through the passage of restrictive laws. Across many countries, pro-life lawmakers have written and passed laws significantly limiting abortion at the state level. Most laws set a gestational cut-off for when abortion shall no longer be permitted after 20 weeks and in case of medical emergency or in case of grave danger to the women, abortion may be granted to women up to 24 weeks of pregnancy. In the US, some states have passed "heartbeat bills" that essentially ban abortions once there is a detectable fetal heartbeat, which can be as early as six weeks—at a point when many women do not even know they are pregnant. Anti-abortionist also opts for laws which impose tight requirements on clinics and doctors providing abortions, such as admitting privileges at nearby hospitals or building standards for clinics. Usually, these are quite hard to meet, which results in the closing of abortion clinics. Laws impose mandatory waiting periods on women who want to undergo abortions.⁴ Thus, these women are compelled to wait for sometimes between 24 to 72 hours after an initial consultation before actually undergoing the procedure. Here, the objective would be to create logistical barriers specific to women who must travel long distances to reach a clinic and therefore making it a hardship to get abortion. States require minors to obtain their parents' consent or notify them before one may undergo an abortion. This has been one way of making parents involved in the decision-making process and probably deterring minors from abortion services.

In some regions, pro-life groups are advocating for constitutional amendments that will categorically recognize the personhood of the fetus or ban abortion outright. In the United States, most of the pro-life activists are seeking a reversal of *Roe v. Wade*, which made abortion a right in the United States in 1973, or otherwise enact a federal constitutional amendment securing the right to life of the fetus. Probably the best example for the legal victory for the pro-life movement is the recent Supreme Court in the United States decision *Dobbs v. Jackson Women's Health Organization*, upholding on June 24, 2022, the overturning of *Roe v. Wade*. Pro-life activists seek the election of pro-life politicians at any level of government and a commitment to banning abortion. Such groups often mobilize their voters, especially religious groups, to vote for politicians promising new or additional restrictions on abortion or pledging to appoint pro-life judges. One of the most effective long-term strategies has been judicial appointments, particularly with respect to the U.S. Supreme Court. Pro-lifers favor the election

⁴ Khushi Agrawal, *The Medical Termination of Pregnancy (Amendment) Act, 2021: Nominally Progressive or Profoundly Liberal?*, 1 *Jus Corpus* L.J. 67, 67-76 (2020-2021).

of presidents and senators who will appoint and confirm conservative judges and thus gradually recreate the judiciary in a more persuasively anti-abortion way.⁵ Pro-life organizations conduct massive public awareness campaigns aimed at swaying public opinion against abortion. Such campaigns may include: Campaigns of Fetal Images and Heartbeat: Many organizations that oppose the act use pictures of fetuses to create sympathy among the general public. Most of the opinions related to this issue may arise due to the fact that the fetus is humanized and developed sympathy. These groups also provide counselling and support to pregnant women, but discourage them from having abortions. They supply assistance like prenatal care or items for the baby, or information about adoption options. They also embrace adoption as an alternative way of ending a pregnancy in compassion rather than abortion, claiming that women should carry the pregnancies to term and place the child for adoption rather than abort the pregnancy. The interests of some pro-life activists focus on the medical risks of abortion, such as infertility and other health-related problems for the women, including psychological damage or later in pregnancy complications. Through this, they argue that abortion is not only a moral mistake but also holds a serious risk to the health of the woman.

Pro-choice legislators and expansion of abortion rights:

Eliminates or reduces waiting periods and other restrictions limiting access to abortion. Increases the list of medical professionals authorized to perform an abortion, including nurse practitioners or physician assistants to perform a specific type of abortion. Advocate for telemedicine abortion services, which would enable patients to see doctors and receive abortion medication over the phone. This would ensure that the process of abortion service becomes more accessible, especially for those patients located in distant places. Pro-choice groups frequently bring court cases to challenge constrictive abortion laws. They use the courtroom to assert that some laws violate constitutional rights - for example, the right to privacy, autonomy of one's body, or equal protection. This is especially true where new laws are being passed that severely limit access to abortion, so-called "heartbeat bills" and medically unjustified regulations placed on clinics which perform abortions, or so-called TRAP laws. Pro-choices also work towards international policy change by positioning reproductive rights as fundamental human rights. Organizations like the Centre for Reproductive Rights and Amnesty International mobilize at the international level to win greater access to abortion and, even

⁵ Saumya Tripathi & Rishabh Gupta, *Bodily Autonomy of Women and the Medical Termination of Pregnancy (Amendment) Act, 2021*, 3 Indian J.L. & Legal Rsch. 1, 1-6 (2021-2022).

more, to ensure that international treaties or bodies, such as the United Nations, clearly recognize reproductive autonomy as a core right. They also advocates try to elect pro-choice politicians at the local, state, and federal level. They use grassroots mobilization and support pro-choice candidates who promise to protect and expand access to abortion. Pro-choice activists also lobby in association with judicial appointments, especially to the Supreme Court and other federal courts, because judicial decisions are by nature determinative of access to abortion.⁶ They advocate for presidents to nominate pro-choice judges who would prevent or reverse a restriction on women's rights. Pro-choice activists argue that abortion laws should be science-based and evidence-based and follow public health best practice. They advocate for policies that affirm safe legal abortions but must challenge medically unnecessary restrictions. Referencing statistics that have already proven abortion, particularly in the early stages of pregnancy is an extremely safe procedure with minor risks. This data has been used by pro-choice groups to clear the oppositional claims that abortion is harmful to women's health. Advocating for Medication Abortion Pro-choice advocates have been working to raise awareness and make medication abortion more accessible, based in part on research about the use of drugs like mifepristone and misoprostol. They support policies that would allow wide access to these drugs-through telemedicine, for instance-and work to eliminate other obstacles to their use that are not necessary. Pro-choice activists argue for the laws that would defend doctors who perform abortions and women who have them. This means pushing against the "conscience clauses" that allow healthcare providers the right to refuse service and campaigning for stronger protections against harassment of abortion clinics. Pro-choice leaders work to alter the people's perception of abortion, arguing that reproductive control stands at the core of women's equality and liberty. They emphasize that decisions about abortion should be private, personal, and free from government interference. Reproductive Justice Framework: Many pro-choice advocates embrace a "reproductive justice" framework that ties the right to abortion to broader social justice concerns, such as access to contraception, prenatal care, paid family leave, and economic parity. The most dominant role of pro-choice activism is reducing stigma around abortion. Organizations encourage women to share their abortion stories in an attempt to humanize the issue and remove shame and silence attached to it. Pro-choice organizations strive to make realistic, and complex depictions of abortion in media and entertainment challenging the ones that testify against it as immoral or dangerous from a

⁶ Vaishali Nair & Rohit Alex Abraham, *Abortion Limit of 20 Weeks under the Medical Termination of Pregnancy Act: A Fallacy of Rule of Law?*, 9 *Supremo Amicus* 357, 357-68 (2019).

medical perspective. Pro-choice organizations run education campaigns, where the people are informed of their reproductive rights and how to access abortion services. Such campaigns are mainly focused on reversing the misinformation caused by opponents of abortion and sometimes on making abortion a safe and legal medical procedure. They protect abortion clinics and providers by offering them with legal, financial, and even personal defence against protesters' harassment or violence. Pro-choice organizations also offer financial and logistical support to women seeking abortions, especially where the procedure is unavailable or very unattractive. It can be done by helping women pay for procedures, providing rides to clinics, or accommodation when women need to travel several miles to a facility to get care. Building Support Networks Pro-choice organizations often work in solidarity with more large networks of women's health and rights organizations, LGBTQ rights organizations, racial justice organizations, and organizations on economic equality-all because abortion access is strongly interlinked with other social justice concerns. Pro-choice organizations push for access to abortion worldwide. They form alliances with local groups in countries that have restricted or criminalized abortion. Pro-choice organizations lobby for the inclusion of reproductive rights in the international human rights treaties and, additionally, provide funding or in other ways aid abortion access in developing countries.

CONCLUSION:

The right to life does not simply include the right to live but to live with good physical and mental health along with dignity. With the result of these restrictive laws, if a child who is diagnosed with malfunction and disability is forced to be born in this world, wouldn't the child be led to go through a miserable life. The right to abortion, defined by Article 21 of the Constitution to preserve life and liberty, places the basic freedoms of women in relation to their own bodies above caste, sex, religion, or region. Because the legal status of a fetus remains obscure, the juxtaposition of rights of a woman with autonomy against the prospective right to life of a fetus is a highly controversial matter in most sociological debates over legal and ethical considerations. Dworkin's theory is subtle; there can be said to be no intellect and thus no interests in the fetus at such early stages of development. Therefore, the interests of the pregnant woman take precedence at these stages. But when the fetus becomes viable, questions regarding its capacity to feel pain can be taken into consideration, and then rights start coming into play in the moral question of late-term abortion. This balance makes the theme of reproductive rights legislation complex but finally emphasizes the necessity of protecting a woman's autonomy

and at the same time recognizing that any restriction on abortion is appropriately weighed against the evolving interest of the fetus. As a summary, the right of abortion, especially in early pregnancy, should be granted as an absolute right, and any limitation thereof must be carried out considering compelling ethical and medical justification.

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