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Religious, moral, and legal rhetoric of abortion argument: A study of select common law adhering nations

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Abstract--The issue of 'right to life' is a most recognized fundamental human right in all democratic set-ups unquestionable in both legal and moral spheres but it comes into contested mode regarding its absoluteness with an interplay of law and morality in cases such as in matters of 'Abortion' activity. The western Christian states especially the common law adhering countries have much perennial debates over the subject and the necessity of a comparative study of abortion laws cannot be denied for a better conceptualisation of the study over the subject 'abortion'. The study of three western nations having common law system has been taken into consideration for the purpose of finding gaps and controversies. The aspect of the study is to benefit each society from each other's experiences for best suitability of the practice in different situations and learn from each other. For the better objectivity of the research findings some western philosophical arguments also been taken into account with Christian ethos much prevailing in their ideas and propositions having influences over the society causing effects over law making.

Keywords--abortion, morality, ethical, religious, Christian, foetus, legal, right.

Introduction

Whether or not a foetus has a right to life is something that people see in the context of their religion, upbringing and personal morality. Sometimes, municipal laws provide for a straight answer to this question which negates the inquiry into what law ought to be. Other times this debate continues among academics, students, members of different religious denominations as well as medical practitioners. (Gupta, 2019). The question of life and death has bedeviled human imagination since the inception of civilization. The purpose of life and manner of death has been subjected to theosophical, religious, moral, and legal studies across the world. The world as we know is the one where birth is celebrated and death is mourned; where birth is taken as a new beginning and death is the final but truest leveller of mankind.

But at the same time, 'the question of life and death not only has philosophical, ethical undertones but also is under the legal control of the state as a repository of human rights' (Kumar, 2015). Most of us living in the modern world well knows that the right to life is the most fundamental human right which is unquestionable in legal and moral spheres all over the world in modern democratic set-ups. It has been contested whether this right exists in absoluteness and is non-derogable at all times and at the same time this right to life has been expressed to be a common thread contextualizing and debating perennial issues like abortion, capital punishment, and euthanasia wherein it becomes interesting to scrutinize the legitimacy of steps taken that will speed up the process of legalizing abortion (Kumar, 2015). On the other side of legal spheres of this issue of 'abortion' activity, there has always been "a contentious issue with its fair share of squabbles with morality since ancient times" due to which it becomes a necessary thing to trace the philosophical history of abortion and address the issue of 'abortion' on a moral and jurisprudential level, with the interplay of law and morality concerning it wherein "the status of an unborn child, the pro-life versus pro-choice debate, genetic manipulation" in international and domestic laws purview concerning religion comes into relevance.

It has been found that for a very long time, the discussion on abortion has ushered itself into the debate surrounding law and morality. Religious doctrines, practices, and scriptures have quite often denounced abortion as an immoral and hence impermissible practice (Berlatsky & Noah, 2011) that can be equated with murder. On the western front, aside from Catholicism, much of the philosophical discussion around abortion has centered on the criterion of moral personhood and the juncture at which a foetus gets entitled to moral consideration. The philosophical bases for such arguments were laid down by Locke and Kant, who argued that "only rational beings can be called 'persons' with moral status", according to them "the standard subject of morality is an adult, who owns all his or her intellectual faculties", however, they both didn't apply these principles to 'abortion'.

Some other contemporary philosophers have taken a liberal position on abortion, stating that "mere biological life is not what is valued most in human beings, but rather the possession of faculties and powers, such as that of reason, logic, self-consciousness, autonomy, the ability and capacity to form a

relationship,” as to their arguments “an Ergo, a foetus, is a ‘potential person’ rather than an actual one before acquiring these characteristics, and does not have a claim to full moral status and the right to life that follows” (Roe v. Wade, 1973). In opposition to the liberal views, the Conservatives use “slippery slope” arguments claiming that “the degree of foetal development is a complicated issue and hence it is not possible to make an exact determination of the same, drawing such an attempt will be amorphous and pushing back an idea of foetal development for the origin of an individual human life” (Berlatsky & Noah, 2011).

About it, the legal philosopher Salmond has said, “so far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties”. Legal personality may be granted to entities other than individual human beings, for example, a group of human beings, a fund, and an idol (Fitzgerald, 1966). This provides us with an impetus to think over a very question that “whether a foetus can have rights?”, which is much important and becomes much more relevant when taken into the debate including ‘Religion’ with the study of select major western common law adhering nations such as UK, USA, Ireland and Canada which have much allegiance towards Christian religion in the large majority within the states. So, taking these philosophical and legal arguments into place we will proceed towards the study of the Christian religion and the notions present in the religion regarding ‘abortion’ activity.

Christian Religious views on Abortion

It is indisputable that religions shape our culture, our thoughts, our way of life, and consequently our laws but the juxtaposition of religious norms cannot be said to be always righteous in the modern global legal order of human rights evolution. There are many religious norms and practices which contravene the basic human rights norms and values, in this way the religious traditions come into conflict with the rule of law or the ‘law’, and amongst which as discussed above like the other religious traditions, herein the position is quite opposite wherein the legal norms of ascertaining modern human rights values come in conflict with the old existing religious beliefs or norms, but overall the condition can be said equally as a conflict of religion with the law’, in case of ‘Abortion’ as a legal necessity in times of need. Without further ado, let’s proceed toward an examination of the views of the Christian religion on the issue of abortion and the further complications involved.

Christianity is one of the influential and major religions of the world especially existing in the western world, which has always seen the issue of contraception and abortion’ as negative and never uniform. The Christian States in the west adopted the practice of ‘abandonment’ because of the rising fertility and to avoid unwanted bring-up they also started giving children to the Church as an ‘oblation’ which was a Christian alternative to infanticide and anonymous abandonment. Contraception and abortion were forbidden concepts and the only legitimate means to control the birth was abstinence and breastfeeding. There were no direct means of abortion was allowed after the soul entered the foetus ranging from 40 days after conception to the fifth month of pregnancy. (Gudorf, 1993)

Although, we need much more clarity in the subject matter at both national as well as at international levels regarding legal implications and on the other hand therapeutic abortion was allowed to save a mother's life. The Catechism mentions six paragraphs on abortion stating: that since the first century the Church has affirmed the "moral evil of every procured abortion" and it "remains unchangeable". As to this, it is quite clear that the Catholic Church has seen abortion as a sin since antiquity, though the reasons for it has changed from year to years, and Ontological and Perversity views both supported the Church's opposition to abortion. It was considered that "the people who would go for an abortion are the ones who engage in forbidden sexual engagement" (Berlatsky, 2011).

The Ontological view states, "a human foetus is a person from the earliest moments of conception so abortion would be murder or something very close to that" and another view of Perversity states that "Sex is only licit within marriage and for the primary purpose of procreation", hence, "abortion is perverse to the institution of marriage just as contraception" (Gupta, 2019). The Church later rejected the view that "the foetus is a fully developed person" and in one of its statements on abortion, the Vatican said, "it does not know when the foetus becomes capable of being called a person and there is not a unanimous tradition on this point and authors are as yet in disagreement" (The Declaration on Procured Abortion, 1974). The two most prominent Christian chief theologians in the Catholic tradition St. Augustine and St. Thomas Aquinas both don't consider "the foetus as to be a person in its early stages" (Gupta, 2019). The Pope's idea was considered infallible, while some ultra-conservatives claimed that "the teaching on abortion as infallible, and it does not meet the definition of an infallible teaching" (Berlatsky, 2011). The above position shows that the Catholic Church's views on 'Abortion' are not watertight and are susceptible to modification and with this, it becomes relevant to know the ideas of western philosophers over the issue of 'morality and legality' at a place in arguments within Christian religious spheres.

Religion, morality, legality grounds check: competing western philosophical argument's

It has been found that abortion is a contentious issue as discussed in the introductory where philosopher's views such as Locke and Kant are much noticeable further requiring some more philosophical views over the issue of abortion with ethical (Moral), religious and legal aspects becoming the crucial point of discussion. The Greek Philosophical arguments which suggested the "mandatory use of abortion" in certain exceptional cases come first which were considered as a founding stone for current philosophical arguments. A known Greek Philosopher Plato said to use abortion to "prevent an imperfect child from being a liability rather than an asset to the State" wherein he looked it as a solution to the population issue for saving the resources of the Greek state. The great Greek philosopher Aristotle considered limiting the size of families through miscarriage for the state's interest if done before the beginning of the "sense of life in the embryo", thinking that "the beginning of life in foetus starts after the fortieth day in case of males and ninetieth day in case of females".

Another known greek philosopher Stoic has said in this regard that “freely propagated abortion in a belief that it does not qualify to be a human life until its first breath.” It was common to be noticed that both Aristotle and Plato considered abortion activity in the interest of the State in order to reduce population burden over limited resources. In contrast to the above philosophies, a group of religious sect people known to be Pythagoreans rejected the arguments of Stoics and further opposing abortion activity, as on grounds that “the life begins at conception as in that moment itself the foetus was ensouled” and aborting the foetus would amount to committing murder. The Pythagoreans have many influences on scientific pieces of knowledge due to their works such as the writings “Hippocratic Oath” used by medical practitioner’s even today which has been often used to “bastion the condemnation of induced abortions”.

In the case of Roman, they have paternal alliances in their societal system wherein the eldest male member decides his wife or his descendant’s wives too. There are severe punitive measures available in hands of head male member’s or the husbands of wives against their wives for procuring abortions without their consent, which can even lead to a death sentence and vice versa head of a family can also force the women to get aborted as a punishment in any case. Stoics influence can be seen to a greater extent in influencing the Roman thoughts on abortion which makes no such restrictions to be found on abortions in Rome. Roman used to believe the “foetus as ‘pars viscerum matris’ and not as human”.

The modern western American philosopher Wenz has many other views on the subject providing a unique perspective on the relationship of law and religion in the abortion discourse taking Legal and Ethical (moral) notions involved in it (Wenz, 1992). To him the ethical controversy always concerns with the very basic question that “whether the foetus is considered a person with same rights, especially the right to life’, as like other acknowledged persons?” (Harrison, 1983: pg. 16) Regarding this question, it has been a common assumption that “a fetus is a person with a right to life, and thus our legal system must respect that right by restricting abortion” which is a common argument put forth by anti-abortion ethicists, whereas anti-abortion legal theorists on the legal grounds claims that “there exists no fundamental constitutional grounding for a right to privacy, and thus each state legislature is free to regulate access to abortion as long as other constitutional rights are not violated”.

Here it is to be noted that no matter on whatever the claims have been based on but the common assertion was a denial to the abortion practice which has been also asserted by Professor Peter S. Wenz wherein he raised some parallel questions which need to be understood (Wenz, 1992). He agrees to the rejection of the right to privacy on constitutional grounds and on the same hand he asserted that women have a right of abortion on constitutional mandate but unlike many of the conservative legal scholars he thinks, “constitutional grounding for *Roe v. Wade* can be found in the first amendment protections of freedom of religion”, thereby suggesting a solution that “such rights are interpreted broadly enough to reflect their evolving, rather than their original-meanings”. He also proposed that “although it may be valid for anti-abortion ethicists to hold that a foetus is a person, it is just as valid to hold that the foetus at least before twenty weeks, is not a person” arguing that “fundamental to the question of whether the pre-

twenty-week foetus (a “young foetus”) is a person is an explicit or implicit appeal to a metaphysical or religious interpretation of the biological facts”. Hence, he thinks that:

...the right to an abortion can be grounded in the constitutional guarantee of religious freedom: the belief whether the foetus is a person is essentially a religious belief, and the imposition of religious beliefs and practices is prohibited by the first amendment to the constitution. (Wenz, 1992)

In analyzing claims about the personhood of the foetus, Wenz argues that:

...although it can be established strictly on secular grounds that a foetus after twenty-eight weeks of gestation is a person with a right to life, it cannot be established on secular grounds that a young foetus before twenty weeks gestation is a person because belief in the personhood of a young foetus is inherently like the belief in God. Before twenty weeks of gestation, however, a foetus has not developed the basic physiological systems which are found in a new-born, e.g., neither the lungs nor the neocortex of the brain is functional. Thus, a young foetus does differ in a significant, secularly verifiable way from a new-born. (Wenz, 1992: pg. 174)

This argument has been one of a common ground which challenges other's arguments in the abortion debate over the aspect of foetus but simultaneously it suggests that there cannot be an absolute way to clear a path for an absolute right of abortion, as due to many such unclear positions over the morality question in religious and legal spheres. It has been suggested by a growing number of Christian thinkers that, “framing the problem of abortion in terms of the status of the foetus diverts us from other, perhaps more important religious dimensions of the issue” (Wenz, 1992). The problem has been further taken from one more different perspective as what seems to be grounded in the above disposition as well.

A known western bioethicist May has said that “bioethics, in general, has tended to neglect the underlying religious dimensions of moral decision making”. May's analysis of the suffering of patients who have undergone catastrophic illnesses could just as easily apply to a woman who has just discovered she is pregnant against her expectations and wishes (May 1991). As to May:

Before the illness, the patient identifies with her body, with her community, and with the ultimate. The self does not float free behind these identities; it does not draw its life from itself. The self is ecstatic; it pitches itself out beyond itself and identifies in all sorts of ways, wittingly and unwittingly, with these three, depending heavily and daily upon each. Whatever separates the self from these identities imposes upon the self the shudder of death. (May 1991: pg. 9)

In cases women are going through unwanted pregnancy issues see the condition or the issue connected with the congruence of body, society, as well as God due to her religious beliefs in particular traditions with chances of a breach if alternatively acted such as ‘abortion’ which is considered a self-threat to her life as well as a sort of death to a new-comer's life, unless provided by society or her

religious traditions for hope for “new life”, i.e., “a worthwhile sense of self beyond the breach”. Those in society or her religious tradition are convinced that “the foetus she carries is a person in the same sense she is and who urge her to carry the foetus to term is expecting an incredible self-sacrificing heroism from her if they are not prepared and willing to help her to a new, life-giving identity, a new, supportive relationship with her body, her community, and the ultimate, which can bring her new life”. This gives an outlook that the crucial point of contention raised due to abortion should not be just women’s right or the position of the foetus but the societal attitude which makes a perception for those facing unwanted pregnancies or are in danger due to health issues occurring while during pregnancy complications (Wenz, 1992: pg. 174).

Another western philosopher Harrison has remarked that Wenz arguments have created some exceptional choices within many conservative Roman Catholic people agreeing to the abortion process to create a “life-giving society” in which there exists high “proactive choice” with the use of safety measures of contraception preventing the requirement for recurrent abortions. As to Harrison in today’s modern democratic world where women’s rights are at a considerable place therein, “abortions should be resorted to only in extremis to save a mother’s life” on ethical grounds (Harrison, 1983: p. 18). The above vision is shared across a wide spectrum of Christian ethics. It is affirmed by those like Stanley Hauerwas (Hauerwas, 1981: Ch. 11) who take a fairly conservative view toward abortion, and by those like Beverly Wildung Harrison who promote a feminist position that the right to abortion is closely tied to a woman’s right to be recognized as a free, competent moral agent (Harrison, 1983: pg. 195). Where Hauerwas and Harrison disagreement is generally less on their religious visions of the ideal society than on what is wrong with the present society including the church and how we might move toward a vision of society and church that would mitigate the desire or need for abortion (Wenz, 1992).

It has been thought by Hauerwas that the efforts of resolving the issue of abortion over foetus status have been ill-advised as “there are no theological means to determine when life begins”. He argues that “abortion is symptomatic of a deeper problem which Christians must address such as the failure of an individualistic, liberal society to achieve moral consensus and nurture the conviction that life is worth living” (Hauerwas, 1981: pg. 209). It has been considered that instead of prioritizing the political methods the Church should consider the involvement with a larger liberal society as an alternative community that sees “the role of parent (as) one we all share” which can provide support in fostering a milieu of encouraging the goodness of having births of children in unwanted pregnancy cases (Hauerwas, 1981: pg. 229). Such an attempt suggested by Hauerwas could not be objected but it has been argued that “the strategy of alternative communities does not address what she sees as the fundamental problem at the root of abortion, viz., patriarchy”. There exists patriarchy within the society in Church which lowers the women’s position leading to taking away the basic fundamental human rights over their bodies’ “procreative choices” including the right to reproduce. It has been asserted that the right to abortion is not a final means to overcome patriarchy whereas it’s just a way of creating a social change (Harrison, 1983).

There has been a point of difference between both the scholars but it's quite visible that both the scholars see abortion as an issue revealing fundamental religious and social problems and not just a moral one and it requires a "new model of the community". Hauerwas sees such community be existing in "small settings" (i.e., the church) which recognize life as a God's gift, but Harrison sees the inclusion of both Church and society at all levels with confronting patriarchy (Wenz, 1992) but it's been observed that both considered religious obligations and involvement in matters of abortion activity. The above disposition has given an overview on 'Abortion' as to the very base of philosophical grounds which includes morality and religion (Christian ethics) in it with an idea of 'right to life of the foetus' which is somewhat also becoming important as to why it is coming into the debate again and again and the answer to it is the connections of a human being or his/her life being subjected to certain religious or cultural values. As the very basic idea of human beings and rights evolution goes with connected with nature and thereby the concept of 'natural rights' that the origins or evolution is much relevant herein and as the 'first freedoms', the religious rights or religion at its core. The contentious debate over religion and Law' in the case of Abortion makes a necessity to further take some legal arguments concerning the 'morality' aspect of the abortion debate and what the laws say about the issue and how it deals with it in practice. For this study of the position of 'abortion' under law becomes much relevant to be discussed further and due to the limited scope of this study some selected common law adhering nations have been chosen which has been discussed.

An overview of Select Common law adhering Nations

The notions over the abortion debate in the United States go back to the early 19th century period establishing the US position over abortion laws which is quite similar to the position of England. Similar to the UK position the criminalizing of abortion was common after 'quickening, known as 'animation in the US' wherein foetus cannot be aborted after it starts moving in the uterus of a woman. It was just left upon women's will and no particular punitive actions being taken against the medical practitioners involved in it. The position was slightly cleared later in the year 1821 when the US state of Connecticut passed a law making a distinction between pre and post-quickening in which post one was considered a capital offense. Later, in 1828 the New York state make abortion an offense as to the conditions prescribed under the 1821 Act of Connecticut, with one major crucial change being brought by recognizing therapeutic abortions' as "a legitimate excuse to protect the life of pregnant women" according to the medical practitioners. There are many other states which don't take any such liberal attempts to make the abortion process easier as the state of Texas did, but overall the process of abortion was under consideration by most of the states tabbing abortion with liberal views giving relaxations to abort the foetus in case of life-threatening issues to pregnant women's.

The study of abortion laws in the US is a "sine qua non" which owes its position to many selected landmark judgments with a "tussle between the pro-life and pro-choice" selectors many having conservative or liberal views. In a case in the USA over a similar issue of 'abortion', the US Supreme Court declared that "we need not resolve the difficult question of 'when life begins'" (Roe v. Wade, 1973). In the

context of the debate on the constitutionality of the prohibition of abortions in U.S. law, Laurence Tribe argued that “whenever the views of organized religion play a dominant role in formulating an entire government policy, as is the case with abortion, it is an improper involvement of religion in the political process, violating the Establishment clause of the First Amendment” (Tribe, 1973). Later, however, in a move which is testament to the difficulty of this question, he shifted his stance, acknowledging that “religion could not be disentangled from the public debate on the issue”. (Gupta, 2019)

The post-Roe condition make several attempts to turn down Roe’s decision and for which the State approached the US Supreme Court as *amicus curie* in five major cases, but Roe’s decision was upheld in the case of *Planned Parenthood of South-eastern Pennsylvania v. Casey* which consists the following grounds laid:

First, “a recognition of the right of a woman to choose to have an abortion before viability and to obtain it without undue interference from the state”; second, there is a time “to draw lines concerning states’ power to prohibit abortion” and alternatively provide administrative restrictions with taking care of women’s liberty; thirdly, “a finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable foetus”. This above position was termed as “compromised decision between the two camps, namely pro-life and pro-choice” and a notion of maintaining a “fine balance of not having undue burden” has been left upon states (Gupta, 2019). In the year 2003, a new law was passed known as the Partial-Birth Abortion Ban Act which banned “partial-birth abortions” as defined under section 1531 of the act. The new act provides exceptions for saving the life of a mother in certain prescribed conditions. The act and its provisions have been challenged by many conservative states or individual religious groups as like in the case of *Gonzales v. Carhart* in the year 2007 but the US Supreme Court upheld the federal legislation declaring the position of the state unconstitutional in this regard quite opposite to the previous case precedent *Stenberg* with a 5:4 ratio.

In another common-law adhering nation Ireland, the position over the issue was quite differently taken by the State with abortion being historical “*malum prohibitum*”, relaxed their laws to incorporate life-endangerment exception in the year 2013, making it relevant for study due to advanced restrictions especially because of the interplay of Catholicism and its “*inter-dictum's-à-vis* abortion”. The religious moorings in Ireland have inarguably played a major role in transpiring numerous ill-fated events which led them to relax their earlier stance on abortion (Gupta, 2019). Ireland is a Roman Catholic-majority State and in Irish society, ‘abortion’ is considered a contentious matter wherein ‘Catholicism forbids abortion’ and there is a “pro-life stance of the Irish society including the State” regarding abortion and there has been a great turmoil pronounced in cases *A, B and C v. Ireland* (ECHR, 2010) , *Attorney General v. X* (1992) and in the infamous *Savita Hallapanavar Case* . The provision made its way into the Constitution of Ireland in 1983 amidst fears that “the personal rights mentioned in the Constitution could be interpreted to mean a right to abortion” which did the same in the United States of America (*Roe v. Wade*, 1983). In the year 1981, the pressure groups set up campaigns such as the Pro-Life Amendment

Campaign, comprised of people mainly from Catholic backgrounds including the Catholic Doctors Guild, politicians, and so forth (McAvoy, 2008), and in the year 1983 the 8th Amendment was passed due to a mobilization over the pro-life populace by such groups. The earlier sanctions against abortion, under the Irish penal law contained in sections 58 and 59 of the Offences against the Person Act, 1861 were repealed later through an act of 2013. These all developments led to the Protection of Life during Pregnancy Act, 2013 for the first time in Irish history leading to the consideration of abortion as lawful but still, the notions of religious ethics are much involved in practice in such cases in the country.

The analysis of two major western common law following states which have Christian origins and much influences of it on their societies gives a need to study one more western state which has Christian origins and much influences on its society, known to be a mother of the common law system, the United Kingdom. It becomes essential to overview the structure of UK laws regarding the practice of Abortion because it is the “bedrock of other offspring laws” gradually influencing other states such as the United States (Gupta, 2019). In common law, an attempt to procure or procure abortion before ‘quickening’ was legal but once it got quickened the penal laws in the common law system made it fall under criminal sanctions, but this was a prior position that was replaced with Lord Ellenborough’s Act in the year 1803 through which the difference of the basis of quickening and pre-quickenings was ended.

Later, the Offences against Persons Act, 1861 was passed which criminalized all abortion activities under sections 58 and 59 which was quite similar to today’s Indian Criminal law as provided in the Indian Penal Code under Sec. 312 – 316 similarly criminalizing such acts of abortion. This position of criminalizing abortion laws was further solidified through Infant Life (Preservation) Act passed in the year 1929 whose provisions are much overlapping the Act of 1861 and whenever the Jury find any proof for a conviction for child destruction the person getting any kind of relief under the 1861 Act were convicted under this new Act. This shows a clear position that abortion was not allowed in the UK under any of its laws per se in any condition whether the instance of life-saving of a mother comes in between but this position was changed after the case of *Rex v. Bourne*, in the year 1939, in which a fourteen-year girl got pregnant due to rape and Dr. Bourne aborted the foetus to save the girl believing in an act of good faith. Dr. Bourne was charged for the act of aborting the foetus as it was illegal as to their prior position and the issue was resolved through a judgment by Judge McNaughton who took the benefit of the language used in Section 1(1) of the 1929 Act which read as:

“...Provided that no person shall be found guilty of an offense under this section unless it is provided that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.” (Gupta, 2019: pg. 29)

This provides an exception to child destruction in the case of preserving the life of the mother. The Judge remarked the use of “bonafide belief” as a must condition and can be used to make abortion lawful in particular situations. He further said that “even though the words preserving the life of the mother’ are not expressly

written in the Act of 1861, they represent the Common law and are implicit in the word ‘unlawful’” (Gupta, 2019: pg. 30). Although the position has been cleared through this case on the other hand there was a large number of illegal “back-street” abortions taking place in the country threatening women’s life caused to poverty, rape and desertion of husbands etc. (Gupta, 2019: pg. 30) which was quite similar to the Indian position before the passing of 1961 Act and further an Act of 1971. The problem was taken into consideration in the UK wherein a bill was introduced in Parliament in the year 1967 by M.P. David Steel, which required offering a lawful basis to abortions in the country and it provided three positions for lawful abortions certified and approved by registered medical practitioner’s:

First, On the grounds of any risk to the life of the mother or her health anyhow physically or mentally, which is a similar ground as found in the MTP Act, of 1971, of India. Secondly, on “familial medical ground” which permits abortion if any perils have been observed to the physical or mental health of any existing children of the family, it a greater contribution to the mother’s pregnancy termination. Such, a provision doesn’t exist in the Indian MTP Act of 1971. Thirdly, based on any kind of foetal abnormality which provides a condition for abortion approval where there is any risk to the baby in the mother’s womb leading to any serious conditions for getting handicapped, and it seems much similarly found in the MTP Act, 1971 of India as provided in its section 3(2)(ii) (Gupta, 2019: pg. 31).

Although, the provisions give much relief regarding abortions in case of life-saving matters on moral or some ethical grounds there are no such provisions been mentioned specifically to be applicable in matters of ‘rape’ as what happened in Dr. Bourne case or in any such condition in case of a failure of any contraceptive methods or device and the similar position existing in Indian MTP Act of 1971. In the 1967 Act of UK, the position regarding ‘foetus’ has also not been cleared as it does not provide any age limit for termination of ‘foetus’, also criticized by the Lane Committee which suggested an “upper age limit of 20 weeks of gestation”. The new Act of 1967 provides certain procedural safeguarding provisions such as “the pregnancy must be terminated by a registered medical practitioner” and it requires at least two medical persons for the approval which should be done in good faith in a recognized hospital by the State authorities with certain exceptions in emergency cases as required to save the life of the pregnant woman. Later age limit for termination of ‘foetus’ with an “upper age limit of 20 weeks of gestation” has been cleared with a stabilized position made through the Human Fertilisation Embryology Act of 1990.

Still, there are some issues in practice that are creating hurdles and are in question at large, and in one important case, a crucial issue of early contraceptive methods or drugs has been decided wherein “the legality of prescription, supply, and use of morning-after pills” were in question. The claimant on behalf of a society working for the Protection of Unborn Children (SPUC) raised a contention that the use of such medicines and their supply or prescription providing amounts to a violation of the Act of 1861 as provided under sections 58 and 59. The liability claim of women in such matters has also been raised in the case. The issues raised in the case have been settled in Act of 1967 under the definition

of “abortifacient substances” which has been used in this particular case which stated the use of such substances to be prescribed under an administration of two registered medical practitioners and if not done so, then it will be a criminal act. The court further noted that the position regarding “miscarriage” has been left vague due to an undefined term under the 1861 Act and in this case, modern interpretations have been made in this regard to clear the term stating that “in present-day, ‘miscarriage’ refers only to the interruption of pregnancies after implantation” and such methods being in use by people since from a long time back. So, the use of any emergency contraception methods is not to be considered to prevent any implantation or fertilization and that’s why “supplying, administering or using a substance to procure a miscarriage” is not prohibited (Gupta, 2019: pg. 32).

The summary of the position of UK laws regarding abortion is much cleared through the above debate and it can fairly be said that “unlike the United States, abortion by choice is not present in the United Kingdom even before 24 weeks” and the only way provided is through a law which is mentioned under Abortion Act of 1967 which is much similar to MTP Act of 1971 in Indian case with an exception of first 12 weeks reduced period been prescribed for foetus development and beyond that period only permissible in case of emergency to save a life of a pregnant woman from any kind of immediate threat to her or child’s life (Gupta, 2019: pg. 33). So, let’s assess the position of laws relating to abortion in one more democratic state Canada is quite familiar with the common law system and has many Christian adherents in the state. Canada has been through a vicious battle for recognition of abortion legally in the country stretched over decades. Similar to other nations the issue has been clubbed with many moral, religious, and legal constraints, and after a long turmoil of events in the state the abortion discourse reached a current liberal position wherein abortion is legal at all stages of pregnancy which further makes it a complicated issue and a challenging notion regarding the misuse of the practice in the state.

Before 1969, Canada doesn’t recognize abortion as a legally recognized process, except in a few cases of absolute necessity which was quite similar to the position in the UK, the pre-Roe case in the USA, and the pre-MTP Act 1971 in India. In 1969, the Canadian government allowed abortion on ‘health grounds’ with the approval of a committee of three doctors through an act known as the Criminal Law Amendment Act. This law amended the previous position wherein abortion was a criminal act and allowed abortions on health grounds only under accredited hospitals which led to an “uneven distribution of abortion cases” in the state compelling women to travel far and suffer at their costs. Later, a committee known as Badgley Committee in the year 1977, noted that “the procedures set out for the operation of Abortion law are not working equitably across Canada” and it was considered an ambiguous intent of the law. It was also found that “there was apprehension amongst the physicians over defining ‘health’ with not having much uniformity over the concept.

Another major change has been brought after a controversial case of Dr. Henry Morgentaler wherein Dr. Morgentaler performed the abortion at his clinic on request without involving the views of any abortion committees and he was charged for violating the set-legal norms but he was acquitted by the jury with an

acceptance of his “defense of necessity” un-justifying the existing laws on abortion. This decision was overturned by the Quebec Appeal Court with a conviction order and it was further challenged in the Supreme Court of Canada wherein the decision of conviction was upheld which led to nationwide protests. The protests forced the Parliament to pass an amendment known as the Morgentaler Amendment Act which “forbade the courts from overturning a jury acquittal” and it further helped Morgentaler to get relief. This led to the opening of new clinics and conducting the abortions at a large scale due to which the state authorities raided the clinics and charged doctors but again the defense of necessity was taken challenging the validity of Sec. 251 of the Criminal Code, followed with an acquittal. The move was again challenged in the Ontario Court of Appeal which set aside the acquittal against which the doctors appealed in the Supreme Court of Canada and it became a famous *R. v. Morgentaler* Case.

The court struck down the existing federal law on grounds of threat to women’s health due to unnecessary delays and inequality towards women which is against the protected right to “life, liberty, and security of the person” as provided under the Canadian Charter of Rights and Freedoms. The choice of terminating a pregnancy through ‘abortion’ means has been considered a moral right and the conscience of an individual should prevail over that of the State in a democratic society. On the other hand, the court also recognized the “protection of the foetus as a lawful objective under Canadian criminal law”, however, it was also held that the existing abortion law does not provide for a balancing approach between the objective seek and the women’s fundamental rights. Thus, section 251 of the criminal code was held violative of section 7 of the Canadian Charter of Rights.

The judgment was never an ideal case for positioning the abortion facility in the state as it led to further complications with the access to abortion cases and also to the rise of the movement of pro-life groups in the country due to which the Parliament tried to bring “trimester approach” in which abortion was easy to be done in early stages whereas a restriction in the later stages of pregnancy period. But unfortunately, the bill failed to pass. Later, to defeat the purpose the anti-choice group people drafted a bill known as Bill C-43 to again get back to the previous position of criminalizing abortion activities, with the certain exception on health grounds of women at medical practitioner’s choice but the bill got stuck in the Senate due to a tie status with a 43-43 vote, which as per the norms of the senate regarded as defeated and thereafter no further attempts been made to rectify the position in this regard. This has cleared a lack of consensus existing over the right to abortion in Canadian society and it might be a possibility replacing the existing liberal position with a conservative view whenever an “anti-choice caucus gains majority” in Canadian Parliament at any time in the future. But in some provinces of Canada separate legislation have been passed to support access to abortion within specified medical clinics.

Conclusion

The above discussion gives us an overview of the position of abortion in some selected different common law adherent nations wherein it has been cleared that on one hand when Ireland has an extreme position regarding abortion. Canada is oppositely other extremes of the metaphorical stick that holds its sway over

abortion discourse and correspondingly, how different societies have sought to regulate feminist autonomy. It is to be found noticeable that the UK law regarding abortion is quite similar to India with just a few differences, which might be matched with some interpretative ways, whereas the US laws are trying to create a balance between the contending goods of the State and the pregnant women.

The decisions of courts in the above discussion of select western common law following nations have revealed that the courts along with the apex court of the nation, all were not exclusively based on the idea of women's right protection as enshrined and provided in international human rights instruments (Scolnicov, 2005), but alternatively as an idea of recognition of the right to life of the foetus' but not in all exclusive situations with certain exceptions based on a broader principle of the protection of a human life which includes women in this case as first whose life is in danger due to certain complications during pregnancy. The complexity of religious notions prevailed everywhere and the states have tried to just give a liberal modern view trying to accommodate the religious values in place placing the natural right of life to be protected first morally. The question of religious reasons for forming any law has always created many problems even in the case of western common law adhering to most developed nations in matters of the private life of men and women, but the problem is more surrounded by many political loads and the fundamental questions of constitutional grounds which have been many times over-shadowed as such in the current case of the regulation of abortion.

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