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RIGHT TO ABORTION – AN INSIGHT UPON THE RIGHTS OF THE STILL BORN CHILD:

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ABSTRACT:

In the contemporary legal landscape, significant amendments have been made to existing statutes, regulations, and bylaws by legislative bodies. It is incumbent upon the legislature to ensure that its enactments do not contravene the fundamental rights outlined in Part III of the Constitution. In India, families hold a deep-seated belief that children born into their fold are a divine blessing, viewing the child as synonymous with a deity. The legal framework aims to safeguard customary beliefs and practices that align with public policy.

The legalization of abortion, whether by a married or unmarried woman, carries inherent implications. While there have been no judicial pronouncements definitively interpreting the term "person" as used in Article 21 to encompass the unborn child, it can be inferred implicitly that the right to life extends to the foetus within the mother's womb. Consequently, permitting abortion could be construed as a violation of the fetus's right to life under such circumstances.

Right to abortion remains as the most contentious and debated issue in the contemporary legal era. It seems to be that much more attention has been granted to the right of the women to abort, but there is significant discussion in relation to the right of the foetus. This paper aims at bridging the gap by analyzing the complex intersection between the right to abortion and the rights of the foetus. It devolves into legal, ethical, and philosophical considerations surrounding these issues.

INTRODUCTION:

Right to life is a fundamental right guaranteed to every person. But there are no express wordings in the legislation that confers such a right to the foetus i.e., the child in the mother's womb. Studies reveal that the heart of the child develops within 2 to 3 weeks of pregnancy. It is believed according to the Indian customs that once a child develops its heart then it becomes the soul becomes independent from that of the mother. It is essential to give respect to the reasonable

believes of the people in the society. If the child in the mother's womb is recognized as a separate individual then it will be bestowed with the right to life.

RIGHT TO ABORTION:

The supreme court of India in the case of X vs the principal secretary Health and family welfare department held that a woman, married or unmarried is entitled to an equal access to abortion up to 24 weeks of gestation period, further such abortion must in compliance with the Medical Termination Pregnancy Act, 1971. Earlier rulings led to a conclusion that the "Medical Termination of Pregnancy Act, 1971" permitted abortion up to 20 weeks upon the advice of the medical practitioner under specified circumstances. In this particular case the unmarried woman became pregnant due to consensual relationship and since her case was not covered under the special circumstance, and consequently she was denied the right to abort. Supreme court ruled that there must be no distinction between the married and unmarried woman as it would affect the provisions of the constitution and the fundamental right to equality and further held that a woman has a right to abort up to 24 weeks of pregnancy.

FOETAL RIGHTS:

Foetal rights refer to those rights that are considered to be the moral or the legal rights of the child in the mother's womb either under the civil law or under the natural law.

LIMITATION ACT OF 1963:

The explanation attached to section 6 of the limitation act of 1963 considers the child in the mother's womb as an infant.

INDIAN SUCCESSION ACT, 1925:

Section 2(e) of the Indian Succession Act, 1925 declares minor to be of any person who has not attained the age of majority i.e., any person below 18 years of age. Accordingly, the term minor can be interpreted to include a foetus. Such interpretation confers property rights to the child in the mother's womb. For instance, if at the time of partition if a child was in the mother's womb then under such circumstances the child should be allotted a share in the joint family property.

THE INDIAN PENAL CODE:

Section 312 of the Indian Penal Code reads as follows;

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

The section clearly prohibits the abortion of a child in the mother’s permitting it to be done only for the protection of the rights of the women in good faith.

HINDU SUCCESSION ACT, 1956:

The Hindu succession act of 1956 confers certain rights upon the foetus. The child in the mother’s womb at the time of the death of the intestate and who is subsequently born alive is entitled to a share in the property by way of intestate succession.

UNIVERSAL DECLARATION OF HUMAN RIGHTS:

The United Nations general assembly adopted the universal declaration of Human rights in the year 1948 to which provides for a list of human rights to which all human beings are entitled to. The right to life is one among the rights which the UDHR provides for.

Section 3 of the universal declaration of human rights reads as follows;

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

If such rights are interpreted to be applicable even to the child in the mother’s womb, then there arises a huge discrepancy between Article 21 of the Indian constitution and section 3 of the Universal Declaration of Human Rights. But, till date there is no clear inference as to whether the rights conferred by the UDHR is applicable also to the child in the mother’s womb.

RIGHT TO ABORTION:

The right to abortion is considered to be a argumentative topic which covers certain specific issues such as the autonomy of the women over their body, rights of foetus and so on. It has become a complex and multifaceted issue by giving due consideration to the ethical, legal and philosophical aspect of the same. This research aims at exploring the impact of right to abortion upon the rights of the foetus and its societal implications. There has been a debate as to where the person-hood begins and where a line has to be drawn between the rights of the mother and

the rights of the foetus. The proponents of the fundamental right strongly contend that the women have the fundamental right to control their reproductive choices including the right to terminate their pregnancy. There has been an universally accepted contention that a individual has the right to decide about their bodily affairs without the intervention of the state. Therefore from such a perspective it seems to be that the right to abortion is essential for the protection of the rights of the women and for women empowerment. Denying a women the right to have access to the safe and legal abortion services have a more serious repercussions over the health of the women, her socioeconomic status and well being. Which may further lead a women to have unsafe and clandestine abortion which may lead to a high rate of mortality and morbidity. But those who are against the conferment of the abortive rights to the women strongly believe that it would affect the inherent moral worth and right to life that has to be protected from the conception onwards. They are of the opinion that the abortion is morally equivalent to homicide, as it involves the deliberate termination of life of the foetus.

One of the major concerns is that if the foetus is regarded as a person then it would be conferred with certain rights and the impact of abortion will be such that it will lead to the violation of the rights conferred upon the individual(foetus). However the answer to the question whether the foetus is to be treated as a person is inherently complex and subjective. Because different ethical frameworks had lead to different conclusions. Some are of the opinion that the foetus attains the status of an individual person upon its birth, but others are of the opinion that the person-hood is inherent and it is right from the conception. But, even if one accepts that there are certain rights to the foetus, still there would be a question as to how to bring a balance between the rights of the foetus and the mother. In cases where there is a threat or risk to the life of the mother then in such cases priority must be given to her rights. Further if the foetus is diagnosed with abnormalities then in such cases the child can be aborted because rather than giving a birth to a child with disabilities at times the mother can opt to abort it so as to prevent it from facing the problems in the society.

The legal provision relating to the abortion vary significantly across the world since there is a change in cultural, religious and other political values of the people. Some countries don't confer abortive rights to the women and they in turn have only limited access to the abortive services. But on the other hand there are certain countries which prioritize the reproductive rights of the women and further they have more liberal laws relating to abortion. In the 1973 the landmark judgement pertaining to the abortion was passed by the supreme court in USA in the case of Roe

V. Wade which legalized abortion.

In addition to the legal and ethical implication right to abortion has broader societal implications as-well. Access to safe and legal abortion services is closely linked to women's ability to participate fully in social, economic, and political life. When there is a denial upon the right to make reproductive choices there is denial of full citizenship and autonomy. This ma in turn hinder the efforts that had been taken in order to bring gender equality and social justice and may lead to gender inequality. The availability of the abortive services has its own implications upon the public heath criteria. In countries where the abortion is illegal and is highly restricted there are chances of women resorting to unsafe abortive practices which may pose a serious treat to the well being of the women and pose treat to their health. But on the other hand in the countries where there is easy access to the abortive services women can have safe abortion and there will be low rate of maternal mortality and morbidity.

CONCLUSION:

Right to abortion one of the most debated and complex issue that raised serious questions as to the rights of the women and to that of the foetus. The debate encompasses ethical, legal and philosophical considerations and has a broader societal implications. Finding a balance between the rights of the women and the rights of the foetus is a challenging task and it requires careful consideration as to the rights and the needs of the parties concerned.

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