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A Study on Abortion of Disabled Child to be Born

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There are laws on abortion to see that it is done only for mandated situations and not whenever pleased. Since the previous times like during the times of Ramayana, it was carried out by surgeons of barbers. In the early 1800s campaigns against abortion began but little progress was made in the United States after the civil war. But as time moved on with the advancement in technology and different methods law got adapted to it and changed and implemented new laws in favor of abortion. The majority of mothers of congenitally disabled children, like the majority of the general public, do not defend the right to life of defective fetuses.¹ But the question which arises is how far are the mothers who give birth to their own child are justified in aborting their own child. No matter what the reasons are especially if it is a disabled fetus, on what grounds can they go ahead? This research mainly tries to address these questions by comparing them with a case law that has been decided in the past on these grounds, especially on the basis of disability. Every person has the right to life and no one can snatch away this right unless it is directly through legal procedures. And hence it becomes important to understand that even though the court might allow abortions on the grounds of disability, how far is it justifiable.

Keywords: *abortion, disability, termination, disabled fetus.*

¹ Breslau, Naomi, 'Abortion of Defective Foetuses: Attitudes of Mothers of Congenitally Impaired Children' (1987) 49 (4) Journal of Marriage and Family, 839-845

INTRODUCTION

Abortion is a procedure where pregnancy comes to an end. It is usually carried out by licensed doctors. There are different reasons why a child is aborted even before it is born. A few reasons include physical problems in the mother, hormone problems, exposure to toxic substances, etc. But why would a mother take such a decision which is painful indeed to the whole family? Anything which prevents a person's physical movement is called Disability. Due to a few reasons, an unborn child may also have a disability because of which in the later stages of his life he may be facing some difficulties or his life may be limited until only a few days. Now the question which arises is how far humans are justified for killing another living being that is yet to be born. There may be disabilities but is that one reason enough. They may not live for too long. But snatching away their right to life even before they are born is something that is inhumane. There will be people who will agree with the fact that rather than seeing them die in front of our eyes, better to abort the child. But how far it is right and how far can the disabled child be justified. In respect to this, we have a separate term for this which is Eugenic Abortion which means to eliminate the disabling genes from the race. There are different laws for different countries which are to be followed but at the end of the day, all of us are human beings. All of us expect to be treated with equality and justice. People who are disabled shouldn't feel indifferent about themselves rather society should help them for accepting themselves the way they are. Prejudice against disabled people should not be encouraged at any cost. But in the first place are disabled children have the right to enter this world is a bigger question before everything. Regardless of the answer, there are instances where disabled children are aborted. Ours is a democratic country where every person has minimum expectations for being treated with basic rights which are guaranteed to us by the constitution. It cannot be snatched away unless mandated by law. If this is the case with humans then definitely it is applicable to even the unborn as even they will enter this world one fine day and have all the rights equally. No matter if they are disabled or not they have equal rights and they cannot be violated under any circumstance. If disability comes to be the only reason for the abortion then it is not fair, to keep apart the emotions of the disabled child's parents. There are cases where few of them tend to live for some years rather than

having premature births. Not only this, few tend to live a normal span of life regardless of their disability. Hence they too have equal rights.

LAWS ON ABORTION

Abortion is usually the process of killing an unborn child. It may be due to various reasons as sometimes there will be premature births or any women may become pregnant as a result of rape or due to various other reasons abortion is done by doctors legally. In India, abortion can be done within twenty-four weeks of pregnancy. Under extraordinary circumstances beyond twenty-four weeks, abortion may be allowed. Abortion is usually done after taking into consideration the opinion of the doctor. Abortion can only be done by the doctors who possess a license for doing the same if not it is considered to be illegal.

ANALYSIS OF NIKETA MEHTA CASE

Niketa Mehta was a woman who was pregnant. She was middle – class woman and she had full knowledge regarding the fetus. She wanted to terminate her pregnancy when got to know that there were chances of having a miscarriage as there was a heart defect to her to be born baby. Rather than opting for illegal methods she and her husband approached Mumbai High Court and filed a petition along with her specialist. They wanted permission for abortion in the 23rd week of her pregnancy. At that time the court has said that including a country like the U.K. there was no legal age specified for abortion and the reason given by her was she couldn't face the trauma of losing her child nor did she want to give birth to a disabled child. While Niketa failed to obtain a favorable judgment from the court, her case has prompted the government to announce that it will be considering a review of the law. Further, this case raises several ethical dilemmas related to abortion, and also to a disability, and the role of medical intervention.²

² Neha Madhiwalla, 'The Niketa Mehta case: Does the right to abortion threaten disability rights?' (2016) 5 (4) *Indian Journal of Medical Ethics*, 152

DISABILITY AND THE MEDICAL TERMINATION OF PREGNANCY

In Indian disability-related abortion is allowed up to 20 weeks if there is a prenatal diagnosis of congenital defects. Once the fetus with a disability is detected the abortion process would follow. But at any time it was done after the women undergoing abortion consented. It was said that in a few cases like Niketa's case not until 20 weeks was the disability detected. It was in the year 1971 the Medical Termination of Pregnancy Act³ was introduced. The latest amendment was done in the year 2020. According to section 45⁴ of the Indian Penal Code 1860, any medical practitioner is not liable for doing an abortion as he is permitted to do so by the law. It should be done under the provisions of the act. There are a few sets of conditions upon which the abortion may be carried out by a registered and practiced surgeon. On January 29, 2020, this act was again amended. For the abortion to be done it should be done within 20 weeks of pregnancy along with an opinion of a registered medical practitioner. For 20-24 weeks of pregnancy, the opinion of two medical practitioners is required. Violation of these basic rules would be a violation of law as it is mandated by law.

DOES THE RIGHT TO ABORTION THREATEN DISABILITY RIGHTS?

To answer this question first another question needs to be answered that does doing abortion of a disabled child is against the commitment of preserving the rights of the disabled? While few may answer yes and few no, it all depends on perspective as few may not be able to see their own children die especially being aware of the fact that there is no guarantee that they will survive for too long. While this is maybe one side of the coin, the other side is that even though they may not survive for too long once they are born they are also humans. Just because they suffer from disability it is nowhere written that they should be snatched away from their right to life for those few days. Of course, they may die but something which is better than killing before they even are born is to let them live and we never know how long is their length of life. And if they are to die due to disability in the future, they can live at least for

³ Medical Termination of Pregnancy Act, 1971

⁴ Indian Penal Code, 1860, s 45

a few days if not pain will definitely follow but no one has the right to kill a person and hence it is clearly a violation of their rights.

PROS AND CONS OF ABORTING A DISABLED CHILD

Following are the advantages and disadvantages of aborting:

Advantages:

- After the amendment, it was assumed that there will be safe abortions.
- If abortion is done, there is a lesser risk of getting infected rather than giving birth to the baby.
- If abortion is done there will be lesser complications than when given birth.
- More women die from childbirth than from abortion.
- There will be a long-term mental and physical health risk if birth is given than when aborting.

Disadvantages

- There might be incomplete abortion in some cases which poses a great risk.
- Heavy Bleeding is experienced after a women's child is aborted.
- A woman who undergoes abortion might suffer from depression due to flashbacks along with feelings of guilt.
- After the abortion, there might chance for preterm birth in future pregnancies
- In a few cases after abortion, there might be internal organs damage.
- As we see there are both advantages and disadvantages of aborting a child no matter if it is normal or a disabled child. These include medical, mental, and physical advantages and disadvantages.

CONCLUSION/SUGGESTIONS

After the completion of the research paper, one thing which is very much clear is that a disabled child cannot be aborted just because there are no survival chances or that it may live

only for a few days. It is very obvious that a mother will be depressed over her own child's death especially considering the fact that she knew it beforehand. But it may so happen that the disabled child may live longer than expected. First of all, no human has a right to kill another person or snatch away his right to life. There will be a few rare circumstances where aborting the child will be the only resort. In rarest of rare cases with the consent of the mother, it can proceed. But in general no one can be against it. When law treats us equally without any kind of differences whether we are short or tall, black or white, thin or fat everyone is equal before the law. If this is the case then no one can abort a child just because he is disabled. It is a clear violation of his right to life. It will be painful for the family especially the mother to see such an unfortunate event in their life but that is far good than living with the guilt of killing their own child, especially over the fact that it is disabled. According to World Health Organisation (WHO), it is estimated that around 40 - 50 million abortions take place per year. An estimated number of around 1,25,000 abortions happen per day. While this may be only for normal abortions for various reasons the number may vary for disabled abortions. There are few countries where abortion is not wholly legal. France is the country with the most number of abortions with a down syndrome where ninety-six percent of pregnancies are terminated. In simple words what can be concluded is that aborting disabled children based on their disability is lethal discrimination and something uncalled for. It shouldn't be promoted or encouraged and the rights of the disabled must be preserved.