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**RIGHT TO ABORTION: ARGUMENTS AND COUNTER-ARGUMENTS**



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## RIGHT TO ABORTION: ARGUMENTS AND COUNTER- ARGUMENTS

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Abortion is a process in which pregnancy is ended so that it doesn't result in the birth of a child. Although, it is becoming an accepted practice worldwide but still women are expected to feel guilty, ashamed and grief-stricken for undergoing the process of abortion. Women need to justify their decision in front of various quarters of the society which still regards this process against the socially-accepted norms and values. Though, the legal fight for abortion had been won in many countries but still the moral wall remains to be assailed almost in every nook and corner of the world. Protection of a legal right with moral backing becomes very easy. Unless abortion is not considered morally

acceptable, women will not be said to have gained their reproductive rights in true sense.<sup>1</sup>

The supporters of anti-abortion movement have come up with various arguments against the right of women to have abortion. The arguments range from the patriarchal notion of 'rights' to legal rights of fetuses. New arenas for attack are added constantly to this range. The subsequent paragraphs aim to have a look on some of those claims and prove why such arguments are unsustainable and need to be rejected at the outset itself.

Those who are against the idea of women having the right to abortion argue that the one practising rights must be independent, enlightened, rational and able to weigh the cost and benefit of one's actions but women are irrational and hysterical which makes them disentitled to exercise rights.<sup>2</sup>

However, it should be noted that such a characterisation of 'rights' is a masculine invention for securing the deep roots of patriarchy in the society. Such an interpretation is reflective of the deeply ingrained notions of patriarchy in the

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<sup>1</sup>Mette Lokeland, Reproductive Health Matters (2004) 12 Supp. 24, 167

<sup>2</sup>Masae Kato, Women's Rights? Pinpoint, (2009)

society. There is nothing substantial to prove the irrationality of women or their lack of capacity in regard to taking decisions about their own body and well-being. Therefore, 'rights' are not something which can be exercised solely by men, rather women should also be entitled to the same.

The favourite assertion of the anti-abortionists' rests on the fake sympathy with women. They claim that women have to experience problems emanating out of guilt, shame and sorrow after abortion. However, the reality is somewhat contrary. Women consider the decision of undergoing abortion after thinking thoroughly and there are no evidences that risk of psychological problems is increased just because of undergoing the procedure.<sup>3</sup> The problems associated with legal abortion are not as grave as claimed by many but if continuous assertions about such problems are made, then it may lead women to doubt what's wrong with them even if they are feeling relieved after the whole process. Guilt and shame are just cultural barometers. Constant reminders about how much you sympathise with a woman who underwent abortion will be disastrous as you are trying to make her feel

the loss which she in fact doesn't feel. Hence, such emphasis on abortion as an experience leading to various problems is not acceptable.

Various courts have granted the right to abortion under the right to privacy theory by holding that right to privacy was "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."<sup>4</sup> However, it has been contended by many that right to privacy can never be a justification for a fundamental wrong against an unborn humanity.<sup>5</sup> It has been asserted that a pregnant woman is not an island, rather the whole society has a vested interest in her pregnancy i.e. protecting an unborn human life for preserving the core value of respect for human life. A vague right to privacy which gives a woman the exclusive liberty to sacrifice the foetus on the grounds of finances and self-worship shouldn't be granted.

It is need to be noted that the right to abortion fits within two cross-cutting protected rights which are the right to bodily integrity and the right to privacy in making intimate family choices, both incorporated into the health exception, so it

<sup>3</sup>Lokeland, *supra*, 167

<sup>4</sup>*Roe v. Wade* 410 U.S. 113, 153 (1973)

<sup>5</sup>L. Darnell Weeden, The Problematic Right to

Abortion from a Natural Law Perspective (2015) 2 Indon J Int'l & Comp L 803

is a matter of not only autonomy but also of survival.

The right to bodily integrity is a cornerstone of law. There are two facets to this right: the right to choose the way of living his/her own life and the right to consent to the effects of a private party on his/her body.<sup>6</sup> So, when a woman seeks abortion, it is not only about her exercise of right to choice as an isolated individual but also about her right to consent to the effects created on her by the presence of a separate entity i.e. foetus. Therefore, women must have the right to be free from the non-consensual effects of foetus on her body. Abortion rights must not rest only on what foetus 'is' but also on what foetus 'does' to a woman if pregnancy is non-consensual. The abortion laws should be framed by evaluating not only how abortion affects foetus but also how foetus affects the woman in case of unwanted pregnancy. Also, foetus harms the woman not only when pregnancy is medically abnormal but also when it is normal and non-consensual. Pregnancy is a massive transformation of woman's body and liberty even when it is medically normal. She needs to take the foetus with her everywhere, the option

regarding whether to associate with the foetus or not is non-existent.

The right to private defence provided by the law comes into force when we need to use force to protect our bodily integrity against the one causing the harm. The same can also be applied when the bodily integrity of a woman is threatened by the continuous presence of foetus in the woman's body.<sup>7</sup> Therefore, going by this logic as well a woman should have the right to use deadly force or whatsoever to protect her bodily integrity against the threat from unwanted and non-consensual pregnancy.

Some object to this by contending that pregnancy can't be non-consensual because if a woman consents to sexual intercourse then by its extension, she also consents to be impregnated as a foreseeable consequence of the sexual intercourse. In this regard, one thing needs to be made clear that there exists a difference between responsibility for a condition and consent to that condition. A person consenting to an action that has foreseeable risk resulting in another condition, may be held responsible for it but can't be said to have consented to that subsequent condition. A person who drinks voluntarily may be held responsible for subsequent condition of kidney failure

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<sup>6</sup>Eileen L McDonagh, My Body, My Consent: Securing the Constitutional Right to Abortion

Funding (1999) 62 Alb L Rev 1057  
<sup>7</sup>Id.

but he can't be said to have consented to the failure of his kidney. Similarly, a woman consenting to sexual intercourse may be partially responsible for pregnancy but it doesn't imply that she consented to be pregnant.

In furtherance to all this, a woman has the right to withdraw the consent as well. That's why even if a woman consents to be pregnant, she always has the right to withdraw that consent because she is the one who needs to decide how will another entity affect her. The Courts on numerous occasions have upheld that the right to consent to intrusion of one's bodily integrity includes the right to withdraw that consent.<sup>8</sup>

Despite all this, some object to a woman's exercise of self-defence because they believe that by consenting to sexual intercourse, the woman provoked the implantation of foetus in her body and right to self-defence is not available when the aggression is provoked. This objection proves to be fallacious when we go into the meaning of 'provoke'. To provoke to such an extent that deadly force is considered proportionate for stopping that attack means that victim of the attack originally intended to find an excuse to use deadly

force against the perpetrator. Going by this meaning, it is inferred that women seek abortion as a goal and because of this they provoke the foetus to get implanted so as to achieve the goal of abortion. The absurdity of this inference bears the testimony to the absurdity of the objection.

Pregnancy is not a situation where the woman and the foetus are on an equal footing so that the decision might be arbitrarily taken about who needs to be saved. Rather in this situation, foetus and woman are not on an equal footing because it is beneficial for the foetus but harmful for the woman if she does not consent to it.

Anti-abortionists' claim that the State's interest in the protection of foetal life overweighs the woman's interest in killing that foetal life. They propagate the view that women act selfishly while seeking abortion. Responding to this view, it is the need to ask as to why the issue of abortion always reduced to just woman-foetus only relationship?<sup>9</sup> Questions concerning the context surrounding the foetus and woman are not asked. The context in which abortion takes place, discrimination against women and conditions in which women have to raise the children are not debated. Lack of such culture of debate is indicative

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<sup>8</sup>Mack v. Mack, 618 A.2d 744, 756 (Md. 1993) (holding that a patient can withdraw consent).

<sup>9</sup>Kato, supra, pinpoint

of the mentality under which women are expected to give birth and let the foetus live in any circumstances. Here, the discrimination against women, the sacrifices made by them and the political and social reasons as to why they get impregnated even when they don't want to, go unquestioned. When a woman claims her right, it is considered selfish because there is no acknowledgement of the oppression of a woman.<sup>10</sup>

Another tactic employed by the anti-abortionists is that some abortions are "more understandable" while others are "more offensive". An apparent knowledge of this separation will reveal how this separation is also an extension of the notion of patriarchy.

The abortion of a disabled foetus is considered "offensive" by these people. They accuse women of ableism. But by doing so, they ignore the difference between a disabled human and a disabled foetus. The former is a human being while the latter is a part of woman's body, something which she can abort for any reason. However, this argument is attacked on the ground that foetus is not same as any other part of the body like kidney or hands;

it is not only a part of a woman's body but to some extent, it is a separate person having right to life.<sup>11</sup> But this attack is just meant to provide an emotional angle to the whole debate surrounding abortion so as to deprive women of their rights. The fallacy of this attack can be pointed out by delving further into it which leads us to the conclusion that even contraception should be considered unacceptable as it can destroy a potential life. Such a conclusion itself is indicative of the absurdity of the whole claim.

Foetuses are not entitled with the right to be born.<sup>12</sup> Also, the choice of a woman to abort a foetus with disability in order to protect herself from additional hard work of looking after a disabled child is no wrong because it needs to be acknowledged that although, society should open its doors to everyone but usually, it is not the society which looks after a disabled person, rather, a woman, mostly mothers have to undertake this lifetime commitment. That's why it should not be considered wrong if a woman wishes to prevent suffering for herself and a future child. Thus, terming a pregnant woman's wish for a healthy child as 'ableism' indicates the patriarchal notion of

<sup>10</sup>Id.

<sup>11</sup>Outdated, Arguments in favour of abortion Ethics Guide, date & accessed time missing 2014, [www.bbc.co.uk/ethics/abortion/mother/for\\_1.shtml](http://www.bbc.co.uk/ethics/abortion/mother/for_1.shtml)

<sup>12</sup>Katinka Strom, No Contradiction: Disability Rights and Women's Right to Abortion (March-April 2003) Vol. 33 No.3/4 Off Our Backs 67



burdening the women with all the procreating and caring obligations.

This notion is again reflected in the case of exceptions provided under abortion bans in many countries.<sup>13</sup> Rape is one such exception. But it should be noted that the foetus produced by rape is no less alive than other foetuses, so the actual concern may be the women's culpability for voluntary sexual intercourse. Also, it's better to view this exception as right to abortion being dependent on culpability of men. Analysing all this, it wouldn't be wrong to say that-

“If men could get pregnant, abortion would be a sacrament.”

Apart from all this there are various other reasons why abortion shouldn't be made illegal.

Restricting women from having access to abortion doesn't end the need to have the abortion, rather such restrictions force them to seek unsafe abortions. If abortion is undertaken in hygienic conditions, then it is even safer than child-birth whereas unsafe abortions may have fatal after-effects. This is evident from the fact that according to the WHO, unsafe abortions are the third

leading cause of maternal deaths worldwide.<sup>14</sup> These constraints also deter women from availing post-abortion care.

Also, as per the experts, abortion is the chief method of birth control in the world, and they estimate that about 30 million pregnancies are purposely terminated by abortion each year. However, as abortion facilities are difficult to avail, birth of million more unwanted children are forced every year. So, to reduce our population growth rate, we should make abortion available on a voluntary basis.<sup>15</sup> In no way, it is recommended to make abortion as a birth-control method of choice, rather, it is just stated that in order to reduce population growth, abortion should be made easy and safe while other satisfactory methods of limiting the family must be developed as well.

Right to abortion is usually sought on the grounds of formal equality theory. Thus, equality in public sphere is dependent on the abortion right in private. Usually socially enforced gender roles because of which women have to sacrifice an active role in the public arena for the sake of caretaking are blamed for hindering

<sup>13</sup>Jennifer S Hendricks, Body and Soul: Equality, Pregnancy, and the Unitary Right to Abortion (2010) 45 Harv CR-CL L Rev 329

<sup>14</sup> John Wells, Key facts on Abortion, Amnesty International, (Date of article and time missing), <https://www.amnesty.org/en/what-we-do/sexual->

[and-reproductive-rights/abortion-facts/](https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/)

<sup>15</sup>Harriet Pilpel, The Right of Abortion, The Atlantic Monthly, (June 1969),

<https://www.theatlantic.com/past/docs/issues/95sep/abortion/pilp.htm>

women's equality in the public sphere. This argument also contextualizes the right to abortion in women's lives where they experience intersecting inequalities.

But by doing so, right to abortion is made contingent on the persisting social inequalities and detached from the women's bodies. Equality arguments in isolation do not come up with complete accounts of reproductive freedom as a human right. Defending the abortion right as a tool to cover up for the social inequality disregards the fundamental need of women to have a control over their reproductive lives. Such equality arguments take out the woman's body from the whole discourse and seems more like an apology rather than a justification for abortion.

Therefore, a better account concerning right to abortion will have both the elements viz. body-focused arguments and equality arguments as this right is unitary and doesn't rest on two separate freedoms but on their inseparability.<sup>16</sup> Such an attempt has been made in this essay. Constructive discourse about this topic is the need of the hour as this right is very essential for the women to achieve their full potential and contribute their share towards the positive development of this world.

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<sup>16</sup> Hendricks, *supra*, 329