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LEGALITY AND MORALITY OF ABORTIONS: A QUESTION OF CHOICE OR LIFE

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Abstract

The developments in American jurisprudence in the last year related to the rights of abortion have highlighted the debate between the pro-abortionists and the anti-abortionists. As abortion deals with the issue of perhaps life, it has been connected to morality since ancient times. Most of the religions in the world have deemed it inappropriate. However, in the modern age of gender equality and women's rights, there has been an increased tendency towards giving a woman full control over her body. Restricting access to abortions is being seen as an impediment to this development. More and more countries in the world are liberalising their abortion laws.

At the same time, many people are concerned with the increasing number of abortions happening over time. It is believed that since abortion is a matter of life or death, no person should have a free choice to make such a decision. The notion that the foetus is a human being, and that life begins at conception means that rights should be extended to the foetus as well is gaining ground among these people. Considering both these sides, it becomes imperative for the policymakers, therefore, to keep both ends in mind and try to formulate laws that are aimed at reconciling these two interests.

Keywords

Abortion Rights, Women's Rights, Right To Privacy, Foetal Rights, Abortion And Morality.

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INTRODUCTION

Last year, the United States Supreme Court overturned the decision pronounced by it almost five decades ago. The landmark judgement of the Court in the case of *Roe v Wade* made the Right to abortion a fundamental right in the country. Now, as the Court overturns its decision in *Dobbs v Jackson Women's Health Organisation*, it faces severe backlash from the public.² Following the decision in *Roe v Wade*, the United States became one of the first countries to liberalise its abortion laws.³ Now, as every country in the world seeks to ensure more freedom and rights for women, the United States (known as the pioneer and champion of human rights) has set an unusual precedent in the history of the modern world. The judgement is uncommon in itself, as it has restricted women's rights in a world where more and more recognition is being given to them every day. Even in India, the Supreme Court has taken a liberal stance on women's rights.⁴ The Supreme Court has made landmark judgements in favour of women's rights, even in issues related to abortion. Coming back to the US situation, a lot of controversy and debate has surrounded the ruling of the Court. The decision of the Court has received criticism from the foreign community also. Human Rights and Women Empowerment organisations worldwide have condemned this ruling, as it is believed to lead to women's degradation in American society.

Keeping these controversies and polemics aside, the Court ruling has again highlighted a contentious issue. Regarding the issue of choice and life, the abortion debate is perhaps one of the main areas in which there has been a large interplay between law and morals. Such is the debate that both groups believe in the rightness of their position and want their ideologies to be translated into laws.⁵ The main issue of the conflict is rights—precisely, a woman's rights or an unborn child's rights.

On the one side are those who claim that a woman's Right to choose is absolute and that women should be given all the rights over their bodies. This group has drifted away from the ancient notion

² Ed Kilgore, *The Backlash to the Reversal of Roe v. Wade Is Getting Stronger*, NEW YORK MAGAZINE (Feb. 10, 2023), <https://nymag.com/intelligencer/2023/02/backlash-to-the-reversal-of-roe-v-wade-steadily-growing.html>.

³ *Roe v. Wade*, (1973) 410 U.S. 113.

⁴ Jahnvi Sindhu & Aditya Narayan, *How the Supreme Court's Abortion Judgment Strengthens the Right to Autonomy*, THE WIRE (Oct. 04, 2022), <https://thewire.in/law/how-supreme-courts-abortion-judgment-strengthens-right-to-autonomy>.

⁵ Shiela McLean, *Abortion Law: Is Consensual Reform Possible?*, 17 J. L. & SOC'Y 106, 106 (Spring 1990).

of morality which contests that human life must be valued in all circumstances.⁶ On the other hand, are people who support the notion mentioned above. They want abortion to be banned as it is considered the taking of innocent life. There are various sub-sections in this group, having different interpretations of the line – where an abortion can be allowed. However, they all seem to be against abortion by choice (without necessity).⁷

This article will first look at the primary cause of this debate i.e., the interconnection of law, morals and religions followed by a history of anti-abortion laws. This will be followed by the main body presenting the arguments of both pro and anti abortionists. At the end, the article is concluded with some recommendations and opinions of the authors.

LAW AND RELIGION

As we venture into the ancient world, we need to change our conception of laws. Nowadays, laws are becoming more and more secular, and linkages to religion are being broken. However, laws in the ancient world were primarily derived from religions. In the ancient world, religion, morals, and law were the same.⁸ At such a time, to analyse the concept of abortion laws, we need to look at it from a religious perspective. Religion has been one of the main components in the development of law. Here, we will look at the views of three major religions on abortions – Christianity, Islam, and Hinduism. The Roman Catholic Church (the birthplace of Christianity) condemned abortions and considered them gravely contrary to moral law. However, under a few circumstances, Christian law allowed abortions. It included the threat to a woman's life as a consequence of the continuance of pregnancy.⁹ The different schools of Islamic law permit abortions for periods of varying lengths to 120 days. After that, abortion is only allowed in exceptional cases like the impact on a woman's health, fetal deformity, rape, etc.¹⁰ Similarly,

⁶ Virginia Santini, *Our right to choose: challenging the state's control over women's bodies*, 72 WOMEN FIGHTING BACK: INT'L & LEGAL PERSPECTIVES 39, 41 (February 2016).

⁷ Don Marquis, *Why Abortion is Immoral*, 86(4) THE J. PHILOSOPHY 183, 194 (April 1989).

⁸ DENNIS LLOYD, *THE IDEA OF LAW* 47 (Penguin Law, 2000).

⁹ THE CHURCH OF ENGLAND AND ROMAN CATHOLIC CHURCH VIEWS ON ABORTION, https://www.bbc.co.uk/religion/religions/christianity/christianethics/abortion_1.shtml (last visited Aug. 25, 2023).

¹⁰ ABORTION: TERMINATING A PREGNANCY, <https://hearttogrow.org/wp-content/uploads/2021/12/Abortion-Resources.pdf> (last visited Aug. 25, 2023).

traditional Hindu law texts are strongly opposed to abortions. The Vedas compare abortion to the “killing of one’s parents.”¹¹

The rationale for such a strong position of religions on abortion law is that all religions view human life as having great value, and the prospect of killing a perceived life, thus, seemed to be against God. It was because God was seen as the only authority to kill a person. As we will see in the coming sections, this is one of the main objections raised by anti-abortionists.

DEVELOPMENT OF LAW

The legality of abortions kept swinging till the 19th century. Historical evidence shows that even though there was a strong condemnation of abortions by the various religions, the restrictions were not that stringent in actual practice.¹² However, the 19th century is when the actual debate begins. It starts with England codifying the law on abortions. In 1803, the Parliament passed Lord Ellenborough’s Act which became the first law in the world to criminalise abortions.¹³ Other countries started banning abortions after that. In the US, anti-abortion statutes started emerging in the 1820s.¹⁴ It has to be noted that abortions were banned due to the efforts of doctors and legislators and not religious heads. It shows that morality at the time was concerned with protecting the life of the unborn. Society at that time was still patriarchal, and there was no concept of women’s rights.

The 20th century saw the emergence of feminist movements. The feminists were aimed at promoting gender equality. In upholding the idea of gender equality, one of the main issues was abortion.¹⁵ As we will see forward, abortion activism has been linked with the issue of gender discrimination. Consequently, in the 20th century, women’s rights were recognised. Rights promoting liberty and equality, such as voting rights, were extended to women.¹⁶ In a sense, the morals of society were changing. In such circumstances, many countries started lifting bans on

¹¹ Kiarash Aramesh, *Perspectives of Hinduism and Zoroastrianism on abortion: a comparative study between two pro-life ancient sisters*, 12 J. MEDICAL ETHICS & HIST. MEDICINE 1, 12 (2019).

¹² HISTORY OF ABORTION, https://www.bionity.com/en/encyclopedia/History_of_abortion.html#Social:History_of_abortion_debate (last visited Aug. 25, 2023).

¹³ ALESHA E. DOAN, OPPOSITION AND INTIMIDATION: THE ABORTION WARS AND STRATEGIES OF POLITICAL HARASSMENT 46 (University of Michigan, 2007).

¹⁴ Suzzane Alford, *Is Self Abortion a Fundamental Right?*, 52(5) DUKE L. J. 1011, 1019 (2003).

¹⁵ Sally Markowitz, *Abortion and Feminism*, 16 SOC. THEORY & PRACTICE 1, 12 (Spring, 1990).

¹⁶ Holly J. McCammon & Karen E. Campbell, *Winning the Vote in the West: The Political Successes of the Women's Suffrage Movements, 1866-1919*, 15 GENDER & SOC’Y 55, 87 (2001).

their abortions. In 1929, the British Parliament passed the Infant Life Preservation Act, which amended the earlier laws on abortions, and allowed abortions in situations concerning a threat to a woman's life.¹⁷

Similarly, under Vladimir Lenin, Russia was the first modern state to legalise abortion on request. Other countries soon followed the same path after that as Japan through the "Eugenic Protection Law", legitimised abortion law in 1948, Canada in 1969, and the United States (through the landmark *Roe vs Wade* case) in 1973 declared abortion as the constitutional right of women as it falls under the right of privacy of women. After that, Denmark and Tunisia (1973), France and Sweden (1975), New Zealand (1977), Italy (1978), Netherlands (1984) and finally, Belgium in 1990 legalised abortion. Except for the US, all other countries provided certain grounds under which abortion was permitted and exceeding those was still an illegal and prohibited activity.¹⁸ India also liberalised its abortion laws after passing the **Medical Termination of Pregnancy Act, 1971**, allowing women to terminate their pregnancies in certain cases.¹⁹

Despite so much liberalisation, the overturning of *Roe v Wade* has brought forth a critical issue. Even after so many years of liberalisation, a considerable section of society is still reluctant to recognise these rights. This section doesn't want to include the right to terminate pregnancy in their morals.

CAUSE OF THE CONFLICT

Before proceeding further, we must understand the connection between law and morals. There is a difference of opinion between the jurists on the relation between law and morals. There is the Positivist school which believes that there should be a difference between the law and morals. This school contends that a clear distinction must be made between the two.²⁰ However, even some positivists like HLA Hart believe that morals and laws have a close relation.²¹ On the other hand, natural law school believes that laws are derived from morals. In other words, each law has to pass

¹⁷ Daniel Sokol, *Why the Abortion Act deserves to live*, THE GUARDIAN (Apr. 10, 2022, 11:34 AM), <https://www.theguardian.com/law/2012/apr/10/abortion-act-deserves-to-live>.

¹⁸ HISTORICAL ABORTION LAW TIMELINE: 1850 TO TODAY, <https://www.plannedparenthoodaction.org/issues/abortion/abortion-central-history-reproductive-health-care-america/historical-abortion-law-timeline-1850-today> (last visited Aug 25, 2023).

¹⁹The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India).

²⁰ Dan Priel, *Towards Classical Legal Positivism*, 101(4) VIRGINIA L. REV. 987, 1007 (2015).

²¹ Hamish Stewart, *Legality and Morality in H.L.A. Hart's Theory of Criminal Law*, 52 SMU L. REV. 201, 202 (1999).

the test of morality for it to be applicable in society.²² Here, we are not concerned about which school is better. By analysing various legal systems, we can conclude that morals of society have always had a significant impact on the laws of the state.²³

In the case of abortion, morals and law are in conflict as it is a question of human life. Many medical professionals believe that life begins with the fertilisation of the gametes in the womb.²⁴ It has been considered the basis of the moral stand taken by the anti-abortionists. However, the main issue is whether the human that is already alive, i.e. the woman pregnant with the child in the womb, will have more rights and freedoms compared to a prospective life.

THE SIDE OF THE PRO-CHOICE

First, we need to clarify the meaning of pro-choice. Their point of argument is that women (bearing a child in their womb) should be given exclusive rights to decide the fate of the potential life in the womb, which indirectly confers no human values or rights to the unborn baby in the uterus.²⁵

We need to look at this side from a legal perspective. We are starting with relevant international laws. The United Nations Universal Declaration of Human Rights is a milestone in human and civil rights history. Article 1 of the declaration states, “**All human beings are born free and equal in dignity and rights**”.²⁶ Two important things can be pointed out here. Emphasis is put on the word ‘born’ in the article. It means that people are equal when they are born. In other words, it refers to the fact that there cannot be equality with a person who is not born, which in our case is the human being in the womb. Therefore, as per this article, the human being in the womb doesn’t enjoy the same status as that of an alive human being. The second thing which can be emphasised here is that the article declares that each human is equal in rights and dignity. It, therefore, relates to the ending of discrimination. As everyone is equal and with the same rights, there is no scope for discrimination. And this included that men and women are equal. So, if men are given unrestricted control over their bodies, why should women be denied that access?

²² Dan, *supra* note 19.

²³ Graham Hughes, *Morals and the Criminal Law*, 71(4) YALE L. R. 662, 682 (1962).

²⁴ KEITH MOORE, *ESSENTIALS OF HUMAN EMBRYOLOGY* 2 (BC Decker, 1988).

²⁵ Virginia, *supra* note 5.

²⁶ Universal Declaration of Human Rights, art. 1, G.A. Res. 217A, at 71, U.N. GAOR, 3rd. Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948)

Article 12 of the same declaration states that there should be no arbitrary interference with a person's privacy.²⁷ One of the most accepted definitions of privacy is that it refers to the right of individuals, groups and institutions to choose for themselves how, when, and in what circumstances information regarding them is shared with others.²⁸ Abortion matters are usually private to a person, and a person wants to keep the information to his private self. It can be due to several factors, like aborting the child in cases of extra-marital relationships where the lady doesn't want her husband to know about the relationship. In such cases, if abortion facilities are provided to the women, it would lead to a woman's privacy being breached.

Similarly, if a woman has to provide information about the age of the foetus, and the reason for the termination of the pregnancy, it would also, in a sense, lead to a breach of privacy. As many countries are giving the Right to Privacy legal status²⁹, the Right of women to have an abortion is also gaining ground. Since the last decades of the 20th century, the judiciary has recognised a new conception of Right to Privacy and Abortion Rights. The Right of a woman to decide what should be done to her body has in itself become a Right of Privacy.³⁰ The US Supreme Court was the first Court to recognise the Right to Abortion as a Right to Privacy of women in *Roe v Wade* in 1973, when it held that the US constitution guaranteed the right to liberty, which includes the right to privacy of the woman, whether to terminate her pregnancy or not.³¹

The Supreme Court has given a vast interpretation of Article 21 of the Constitution in India. And the Court, in the case of *KS Puttasawamy vs Union of India*, ruled that the Right to Privacy is a fundamental right under Article 21 of the Constitution. Justice DY Chandrachud, who authored the judgement, referred to *Roe v Wade* and *Griswold v Connecticut* and observed that access to abortion and contraception are included in a woman's Right to Privacy.³²

²⁷ *Id.* art. 12.

²⁸ RIGHT OF PRIVACY, <https://www.merriam-webster.com/legal/right%20of%20privacy> (last visited Aug. 29, 2023).

²⁹ RIGHT TO PRIVACY: HOW IT IS PROTECTED IN OTHER COUNTRIES, <https://indianexpress.com/article/india/right-to-privacy-how-it-is-protected-in-other-countries/> (last visited Aug. 29, 2023).

³⁰ ABORTION AND PRIVACY, <https://web.archive.org/web/20071014175809/http://www.time.com/time/magazine/article/0,9171,903358,00.html?promoid=googlep> (last visited Aug. 29, 2023).

³¹ MARY ZIEGLER, *BEYOND ABORTION: ROE V. WADE AND THE BATTLE FOR PRIVACY* 16 (Harvard University Press, 2018).

³² Severyna Magill, *The Right to Privacy and Access to Abortion in a Post Puttaswamy World*, 3(2) U. OXFORD HUM. RTS. HUB J. 160, 174 (2020).

Now, we will try to negate the principal and central objective of the anti-abortionists, i.e. an unborn child also has a right to life. We will try to analyse this from a legal perspective, whether the law provides a right to life to an unborn person. Let's take an example of the Indian Penal Code – Section 299 of the Indian Penal Code deals with the offence of culpable homicide.³³ The question here can be raised whether killing the child in the womb can be called a case of culpable homicide. This question is answered negatively, both by the same section and Section 312 of the same act. Explanation 3 to Sec 299 clearly mentions that killing a child in the womb is not a homicide.³⁴

Further, the point is enhanced by Section 312, which makes killing a child in the womb a separate offence and less severe than the offence of culpable homicide.³⁵ Such distinction between the killing of an unborn in the womb and the killing of an alive person is present in the penal code of almost all countries in the world.³⁶ It is one of the many legal examples where a distinction is made between an alive person and an unborn person. Therefore, it seems that the law gives precedence to a living person over an unborn one. The law prioritises the woman (who is alive) over the unborn in the womb (not alive). And therefore, if the pregnancy in any way violates the right of the woman, the law has to give her access to abortion.

Finally, we will conclude this section by highlighting the right to life of a woman. As per reports of Amnesty International, criminalising abortions doesn't lead to a reduction in the number of abortions on a large. It only creates difficulty for women seeking abortions and forces them to seek abortions unsafely.³⁷ According to the World Health Organization, almost 25 million women seek unsafe abortions yearly. These unsafe abortions have fatal consequences and are the third leading cause of death and disability in pregnant women. Further, such deaths are preventable if countries de-criminalise abortions and provide women necessary access needed to terminate the pregnancies.³⁸ As such, the demand for recognising an unborn child's right to life seems immoral and illogical, as human lives are being jeopardised to preserve and protect a prospective human life.

³³ The Indian Penal Code, 1860, § 299, No. 45, Acts of Parliament, 1860 (India).

³⁴ *Id.* § 299, 312.

³⁵ *Id.* § 312.

³⁶ John T Shannon, *Criminal Law—Manslaughter—A Fetus is Not a Person as the Term Is Used in the Manslaughter Statute Term Is Used in the Manslaughter Statute* 10(2) U. ARKANSAS AT LITTLE ROCK L. REV. 403, 406-414 (1987).

³⁷ John Wells, *Key facts on Abortion*, AMNESTY INTERNATIONAL (Aug. 29, 2023, 8:29 PM), <https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/abortion-facts/>.

³⁸ *Id.*

AN UNBORN'S RIGHT TO LIFE – THE SIDE OF THE PRO-LIFE

We now also need to look at the legal arguments presented by the anti-abortionists, who refer to themselves as pro-life. The argument begins with the idea that a born child is a moral subject. They further argue that this status should begin at the movement when the child is conceived.³⁹ Putting forth this argument, they emphasise that there can be no absolute moment where the child's moral status in the womb emerges. In other words, a line cannot be drawn to demarcate between the different stages of the foetus and provide abortion in the former stages while denying it in the latter.⁴⁰ A lot of medical arguments support this view. A question may be raised here, how are medical arguments related to laws? Well, it may be answered by the decision of the Supreme Court in *Kalpana Mehta v Union of India*. The Court, in this case, observed that "It "shall" take judicial notice and states that on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference."⁴¹ As scientific knowledge is being used increasingly in our everyday lives, it becomes imperative for lawmakers and jurists to consider the scientific findings while making policies and delivering judgements.⁴² Now coming back to the issue of the unborn child. As per the American College of Pediatrics, it is observable from the scientific evidence that human life starts when the sperm and ova fuse and a single-celled zygote is formed.⁴³ Scientific evidence majorly supports the view that life beings at conception and therefore is logical and moral that the foetus should also be protected and treated as a human being.⁴⁴ From this discourse, we can logically argue that the potential life, too, possesses a right to exist, except in circumstances where there is a direct conflict between the mother's right to life and rights attributed to the foetus.

Now let's look at some laws and judicial pronouncements favouring the right to life of an unborn person. **The International Convention on the Rights of the Child (CRC)** is a treaty of the United Nations for safeguarding children's rights. One hundred forty countries in the world have ratified it.⁴⁵ As per Article 6(1) of the Convention, the States must recognise a child's inherent right to

³⁹ IAN MCLEOD, LEGAL THEORY 223 (Palgrave Macmillan Law Masters, 2007).

⁴⁰ *Id.*

⁴¹ *Kalpana Mehta v Union of India*, 2018 7 SCC (1).

⁴² Oliver Wendell, *Law in Science and Science in Law*, 12(7) HARVARD L. REV. 443, 445 (1899).

⁴³ American College of Pediatrics, *When Human Life Begins*, APCEDS (Mar. 2017), <https://acpeds.org/position-statements/when-human-life-begins>.

⁴⁴ Carl Wellman, *The Concept of Fetal Rights*, 29(1) L. & PHIL. 65, 67 (2002).

⁴⁵ RATIFICATIONS OF 18 HUMAN RIGHTS TREATIES, <https://indicators.ohchr.org/> (last visited Aug. 29, 2023).

life.⁴⁶ As per the preamble of the same treaty, the rights must be extended to an unborn child as well.⁴⁷ At the International Conference on Population and Development, held in Cairo in 1994, it was resolved that abortion should not be used as a form of family planning, as the unborn also has a right to life.⁴⁸

We shall now also look at the laws of Ireland, which provide the right to life to an unborn person. By the 8th amendment to the Irish Constitution, a new subsection was added that guaranteed equal right to life to an unborn child.⁴⁹

In India, there has been an elaboration of Article 21 by the Constitutional Courts, as mentioned above. The same is the case for the rights of an unborn child. In *Vinod Soni v Union of India*⁵⁰, the Bombay High Court Justice VG Palshikar observed that a conceived child, irrespective of the sex, are entitled to full development under Article 21, as has been held by the Supreme Court.

In India, termination of pregnancy is allowed by the Medical Termination of Pregnancy Act, 1971. However, as per Section 3 of the said act, termination of pregnancy is only allowed in two circumstances. The first one is where the termination of pregnancy would lead to a risk of life for the woman, either physically, emotionally or mentally. The second one is that the pregnancy can be terminated when the medical practitioner believes that the foetus will suffer from a substantial physical or mental abnormality if the pregnancy continues.⁵¹ This law, also in a sense, recognises the rights of an unborn person, as it makes the termination of pregnancy an exception to the general rule. And the established rule is that a woman has no right to take away the child's life in the womb. The exceptions to the rule are also based on the principle that "A person's liberty should not infringe upon the liberty of the others". Further, abortion is limited to the medical practitioner's discretion, which clearly states that women don't have the right to abortion by choice.

⁴⁶ Convention on the Rights of the Child art. 45, G.A. Res. 44/25, Annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (Nov. 20, 1989).

⁴⁷ *Id.* at Preamble.

⁴⁸ Tom Venzor, *Protecting the Unborn Child: The Current State of Law Concerning the So-called Right to Abortion and Intervention by the Holy Sea*, 89(4) NEBRASKA L. REV. 1132, 1138 (2011).

⁴⁹ FIONA DE LONDRA AND MÁIRÉAD ENRIGHT, *REPEALING THE 8TH: REFORMING IRISH ABORTION LAW 1* (Bristol University Press, 2018).

⁵⁰ *Vinod Soni v Union of India*, 2005 CriLJ 3408.

⁵¹ Subhordeep Saha, *Empowering an Unborn: Legal Status of a Foetus*, Legal Services India E-Journal (Aug. 29, 2023, 9: 06 PM), <https://www.legalserviceindia.com/legal/article-6095-empowering-an-unborn-legal-status-of-a-fetus.html> (last visited on November 07, 2022).

The fact that many countries have placed limits on the period of abortion can also be viewed as an argument advocating the right to life of an unborn child. The same view was upheld by the Kerala High Court while dismissing a plea for abortion. It observed that an unborn child also has a right to life.⁵²

Keeping in mind the above-mentioned international conventions, laws and judicial decisions, it cannot be denied that the potential life in the womb should also be entitled to a right to develop fully and a right to life. Further, from the perspective of morality, it can be brought forth that endangering the life of an unborn child without any reason goes against the embedded notions of society.

CONCLUSION

The discourse on abortion is one of the most contentious issues in the history of law, morals, and ethics. From a rational and practical perspective, it is very strenuous to reach a conclusion given the firm commitment of both the groups (pro & anti) to the underlying morality of their position. As a result, it becomes imperative to explore an alternative or balanced trajectory ensuring reconciliation of the rights of both the mother and the foetus in her belly. Various contestations have been brought forth, vocalising the termination of pregnancy up to the discretion of the mother, i.e.) the pro-choice cadre, completely alienating the perspective of an unborn child, similarly from the other side, voices have been raised for the prohibition of abortion at all stages of pregnancy, devoting entire rights and privileges to the foetus without considering the health, situation, and status of the woman bearing the child. But when we are looking through the legal aspect, it becomes necessary to relook and revisit all these perspectives put forth by the general public and then set forth legislation ensuring that harmonisation and resolution prevail between the groups of different views and minds. It needs to keep in mind that the law has to address exceptional circumstances, which the general public won't assume to have importance. The overturning of *Roe vs Wade* by the US supreme court resulted in huge controversies not only in the US but across the globe.⁵³ Some call it a win for conservatives or the pro-life ones. This judgment completely

⁵² Hannah M Varghese, *An Unborn Child Has A Life Of Its Own: Kerala High Court Dismisses Plea Seeking Termination Of 31 Week Pregnancy*, LIVE LAW (Sep. 04, 2021, 11:07 AM), <https://www.livelaw.in/news-updates/kerala-highc-ourt-unborn-child-has-life-of-its-own-dismisses-plea-seeking-termination-of-31-week-pregnancy-180900?infinitescroll=1>.

⁵³ Leah Rodriguez, 'Devastating Blow': World Leaders React to US's Roe v. Wade Decision, GLOBAL CITIZEN (Jun. 28, 2022), <https://www.globalcitizen.org/en/content/world-leaders-react-roe-v-wade-overturned/>.

jeopardised women's rights and privileges while bearing a child in her womb.⁵⁴ This judgement in itself has shifted the centre of attention from the mother to the potential life in the uterus. However, from a researcher's point of view, this decision would not only lead to severe implications in the contemporary era but also negate the point of reconciliation. Therefore, from the researcher's perspective following are the suggestions and proposals that may hopefully provide a framework for a way forward and, more importantly, make a consensual reform possible. The main aim of the researchers is to satisfy the demands of both extremes and ensure a balance between them.

- First of all, medical practitioners and professionals should strictly demarcate the difference between the different stages of foetuses. In other words, they need to set up a yardstick as to what may be called a living or after how many weeks of pregnancy a foetus would attain a viability age. By considering this as the base, laws & legislation can be made which would allow a woman to terminate her pregnancy in her initial stages, i.e.) when the foetus is underdeveloped or not developed at all and thereto restricting her to abort her unborn child after a particular time limit or weeks (depending on the salvageability & development of the foetus), thus ensuring a consensus and balancing the narratives of both the pro-choice and the pro-life groups of society.
- There needs to be a provision available for a woman to terminate her pregnancy at its crucial stage, provided it is justified and based on certain evidence. For this, she needs to prove that continuing the pregnancy may pose a dangerous risk to her health or have fatal implications for her body.
- In the cases of rape, incest, etc a woman should have the absolute entitlement to terminate her pregnancy without considering the fate, potential and life of the foetus present in her belly.
- Efforts have to be taken by the government to curb the menace of unsafe abortions. Even after legalising abortion to a certain degree, people take recourse to unsafe abortions. This creates medical problems for women. Training needs to be given to doctors and surgeons to ensure the safety of abortions. Apart from these, medical centres need to be set up where women can legally terminate their pregnancies

⁵⁴ Virginia, *supra* note 5.

- Awareness should be created to prevent misusing abortions as a tool for female foeticide. Female foeticide is a gross violation of human rights, and the state needs to take steps to curb those.

