

# BEYOND PRO-LIFE AND PRO-CHOICE: ABORTION FROM A PRO-WOMEN PERSPECTIVE

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## I. INTRODUCTION

Abortion has been, and continues to remain, one of the most heated debates in the world.<sup>1</sup> The trend of legalising abortions started in 1920 with Vladimir Lenin legalising abortion in the Soviet Union<sup>2</sup> bringing, as of 2012, almost 75% of the world population to have the 'Right to Abortion'.<sup>3</sup> India was a pioneer in introducing legalised abortions by enacting Medical Termination of Pregnancy Act, 1971 for the same.<sup>4</sup> Despite granting a statutory right to the women to exercise their autonomy with regards to abortion, 13% of the maternal deaths in India are caused due to the adoption of unsafe means for abortion<sup>5</sup> and approximately 90% of the abortions are performed under potentially unsafe conditions.<sup>6</sup>

From the Non-Governmental Organisations and Pressure Group to the Political parties, the issue of abortion has spilt everyone into two, those taking Pro-Choice stand and those taking Pro-Life stand. The opponents of legalisation of abortion maintain that the foetus is a life in itself and has the basic human right to survive.<sup>7</sup> On the other hand, the proponents argue that compelling women to bear unwanted children is a form of ethical despotism<sup>8</sup> and that the policy must be directed towards protecting a woman's ability to control her own body.<sup>9</sup>

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<sup>1</sup> Jennifer Strickler and Nicholas L. Danigelis, *Changing Frameworks In Attitudes Toward Abortion*, Sociological Forum, Vol. 17, No. 2 (Jun) 187 (2002).

<sup>2</sup> Patrick J. Flood, *Life after Communism: Democracy and Abortion in Eastern Europe and Russia*, Available at <http://www.uffl.org/vol10/flood10.pdf> (Last accessed on 5<sup>th</sup> April, 2012).

<sup>3</sup> *Abortion Laws Worldwide*, Available at <http://www.womenonwaves.org/set-158-en.html> (Last accessed on 5<sup>th</sup> April, 2012).

<sup>4</sup> Ravi Duggal and Vimala Ramachandran, *The Abortion Assessment Project-India: Key Findings and Recommendations*, Reproductive Health Matters, Vol. 12, No. 24, Supplement: Abortion Law, Policy and Practice in Transition (Nov) 123 (2004).

<sup>5</sup> *Ibid.*

<sup>6</sup> Saseendran Pallikadavath and R. William Stones, *Maternal and Social Factors Associated with Abortion in India: A Population-Based Study*, International Family Planning Perspectives, Vol. 32, No. 3 (Sep) 122 (2006).

<sup>7</sup> Mark T. Brown, *The Morality of Abortion and the Deprivation of Futures*, Journal of Medical Ethics, Vol. 26, No. 2 (Apr) 104 (2000).

<sup>8</sup> Barbera Hewson, *Reproductive Autonomy and the Ethics of Abortion*, Journal of Medical Ethics, Vol. 27, Supplement: The New Ethics of Abortion (Oct) 13 (2001).

<sup>9</sup> Andrea Smith, *Beyond Pro-Choice versus Pro-Life: Women of Color and Reproductive Justice*, NWSA Journal, Vol. 17, No. 1 (Spring) 123 (2005).

Though the intention of the MTP Act was to flip over the Indian policy from a Pro-Life view to a Pro-Choice one, women rarely have their own say.<sup>10</sup> Inter-generational differences, mobility, economic means and various socio-cultural factors play an important role in a woman's decision regarding abortion.<sup>11</sup> On the other hand, when the state adopts a Pro-Life policy, women have no other means but to resort to unsafe and illegal means of abortion as they give up to the social stigma of giving birth to a baby girl, carrying a baby without marriage etc.<sup>12</sup>

This project seeks to analyse both Pro-Choice and Pro-Life ideologies from a woman's perspective drawing a cost-benefit analysis of the both the policies and examining how the women end up being disadvantaged with either of the policies.

## II. SETTING THE DEBATE: THE TALE OF TWO POSITIONS

The two ideologies i.e., Pro-Life and Pro-Choice have never rested in debating against each other.<sup>13</sup> The pro-life position backs on the argument regarding the 'sanctity' of life and how abortion leads to the violation of the right to life.<sup>14</sup> On the other hand, the pro-choice position thrives on the theory of liberalism which says that the individual is the rightful possessor of his or her bodily capacities.<sup>15</sup> However, there are two key features which both the positions share.

### 2.1 The Question of Fetal Personhood

The primary matter of disagreement in the whole dispute is whether the foetus is to be considered a person or not.<sup>16</sup> At one end of the spectrum is the fundamentalist stance that claims either that the newly fertilised human ovum is a human person from the moment of conception, or at least that it must be treated as such even if we cannot know precisely when

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<sup>10</sup> Bela Ganatra, *Coercion, control or choice?* Available at <http://www.india-seminar.com/2003/532/532%20bela%20ganatra.htm> (Last accessed on 5<sup>th</sup> April, 2012).

<sup>11</sup> B.R. Ganatra. *Abortion Research in India: What We Know, What We Need to Know* in WOMEN'S REPRODUCTIVE HEALTH IN INDIA 189 (S. Jejeebhoy and R. Ramasubban eds 2000).

<sup>12</sup> T. K. Sundari Ravindran and P. Balasubramanian, "Yes" to Abortion but "No" to Sexual Rights: *The Paradoxical Reality of Married Women in Rural Tamil Nadu, India*, *Reproductive Health Matters*, Vol. 12, No. 23, Sexuality, Rights and Social Justice (May) 91 (2004).

<sup>13</sup> Raanan Gillon, *Is There a 'New Ethics of Abortion'*, *Journal of Medical Ethics*, Vol. 27, Supplement: The New Ethics of Abortion (Oct) 6 (2001).

<sup>14</sup> *Ibid.*

<sup>15</sup> Shaver S, *Body rights, social rights and the liberal welfare state*, *Critical Social Policy* 39 (1993).

<sup>16</sup> Jane E. S. Fortin, *Can you ward a foetus?* *The Modern Law Review*, Vol. 51, No. 6 (Nov., 1988), 769 (1988).

in its subsequent development it becomes ‘ensouled’.<sup>17</sup> On the other end is the contemporary Roman Catholics belief that the primitive streak stage marked the true formation of a new living individual with a human nature.<sup>18</sup> To answer this, the advocates of pro-choice stand assert that the foetus is not a living person. Thelma McCormack, a renowned sociologist, responded to the pro-life view saying, “Life truly begins in the... hospital room, not in the womb.”<sup>19</sup>

While both the sides vehemently argue the assertion i.e., whether the foetus is a person or not, they agree that if it did, abortion has to be outlawed.<sup>20</sup> In fact, the proponents of the Pro-Choice stand argue that if the assertion is proved to be true, the principles laid down in *Roe v. Wade*<sup>21</sup> must necessarily be discarded.<sup>22</sup> However, a critical intervention crept into the discourse when Jeanette Bushnell, a United States based health activist, stated, “The foetus is life – but sometimes that life must be ended.”<sup>23</sup> This worsens the situation for the Pro-Life advocates as it is not the claim that ‘the foetus is life’ which is problematic, but the conclusion that ‘because foetus is life, abortion should be criminalised’ is a troublesome one. The Pro-Choice champions take advantage of this by conveniently connecting it to the ‘anti-prison’ movement.<sup>24</sup> A commitment to criminalization of social issues necessarily contributes to the growth of the prison system because it reinforces the notion that prisons are appropriate institutions for addressing social problems rather than causes of the problems.<sup>25</sup> This invariably weakens the case of the Pro-Life stand.

Keeping aside the criminalisation issue, it can be fairly stated that in case the status of personhood is granted to the foetus, both Pro-Life and Pro-Choice preachers would consider

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<sup>17</sup> Raanan Gillon, *Is There a ‘New Ethics of Abortion’*, Journal of Medical Ethics, Vol. 27, Supplement: The New Ethics of Abortion (Oct) 7 (2001).

<sup>18</sup> Declaration on Abortion by the Roman Congregation for the Doctrine of Faith (1974), As reported in Mahoney J. *Bioethics and Belief*. London: Sheed and Ward 67 (1984).

<sup>19</sup> CRUM, GARY, AND THELMA MCCORMACK. ABORTION: PRO-CHOICE OR PRO-LIFE? (1992).

<sup>20</sup> Margaret Olivia Little, *Abortion, Intimacy and the Duty to Gestate*, Ethical Theory and Moral Practice, Vol. 2, No. 3, Ethics: Meta, Normative and Applied (Sep) 299 (1999).

<sup>21</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>22</sup> FELDT AND GLORIA, *THE WAR ON CHOICE*. NEW YORK 90 (2004).

<sup>23</sup> Beyond Pro-Choice versus Pro-Life: Women of Color and Reproductive Justice. Page 4.

<sup>24</sup> Anti-Prison movement claims that the imprisonment of the offenders of law is more likely to increase the crime rates rather than decreasing them. (For example: Drug offenders are jailed and it becomes easier for them to access drugs inside rather than outside). Currie, Elliott. 1998. *Crime and Punishment in America*. New York: Metropolitan Books.

<sup>25</sup> Andrea Smith, *Beyond Pro-Choice versus Pro-Life: Women of Color and Reproductive Justice*, NWSA Journal, Vol. 17, No. 1 (Spring) 127 (2005).

the act of abortion a violation of the right to life of a living person.<sup>26</sup>

## 2.2 The Place Where The Foetus Lives

One thing both the stand points completely ignore is the fact that the gestation occurs inside someone's body.<sup>27</sup> The opponents of abortion keep their arguments restricted to the debate 'whether the foetus is a living person or not'.<sup>28</sup> They maintain that the women who become pregnant (whether intentionally or unintentionally) must endure the process of pregnancy and birth, no matter how distressing, painful and risky it is for them.<sup>29</sup> According to the argument advanced by the anti-abortion movement, when there is a conflict between the foetus' right to life and a woman's desire to end her pregnancy, the foetus' rights trump any claim the woman may have to seek an abortion except, perhaps, when the woman's own life is threatened by continuing the pregnancy.<sup>30</sup> To rebut these claims, the Pro-Choice's advocates deny the assertion that the foetus is a living person.<sup>31</sup>

What has remained, and continues to remain, as a grey area in the whole discourse is the absence of discussion as to where the foetus actually lives.<sup>32</sup> More often, the pro-life stand point does not consider the fact that there is a woman involved in the whole issue.<sup>33</sup> The foetus survives not on its own, but on the blood oxygenated by another person. Mary Anne Warren, a renowned feminist, argues that 'there is room for only one person with full and equal rights inside a single human skin'.<sup>34</sup> In fact, the size of the foetus increases enlarging someone else's physical boundaries. Even if it is assumed, for the sake of this discussion, that the foetus is indeed a living person, the 'right to life' invariably circumscribes the woman's right to bodily autonomy.<sup>35</sup> Hence, it can be safe to conclude that the 'right to life' should end

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<sup>26</sup> Margaret Olivia Little, *Abortion, Intimacy and the Duty to Gestate*, Ethical Theory and Moral Practice, Vol. 2, No. 3, Ethics: Meta, Normative and Applied (Sep) 300 (1999).

<sup>27</sup> *Ibid.*

<sup>28</sup> Aurora Plomer, *A Foetal Right to Life? The Case of Vo c. France*, 5 Hum. Rts. L. Rev. 311 (2005).

<sup>29</sup> Barbera Hewson, *Reproductive Autonomy and the Ethics of Abortion*, Journal of Medical Ethics, Vol. 27, Supplement: The New Ethics of Abortion (Oct) 14 (2001).

<sup>30</sup> In *Borowski v. Canada (A.G.)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231, Realistic Equal and Active for Life Women ("R.E.A.L. Women") made the aforementioned submission.

<sup>31</sup> K Mark McCourt and Daniel J Love, *Abortion and section 7 of the Charter: proposing a constitutionally valid foetal protection law*, 18 Man. L.J. 365 (1989).

<sup>32</sup> Margaret Olivia Little, *Abortion, Intimacy and the Duty to Gestate*, Ethical Theory and Moral Practice, Vol. 2, No. 3, Ethics: Meta, Normative and Applied (Sep) 302 (1999).

<sup>33</sup> Cathy Cleaver Ruse and Rob Schwarzwald, *The Best Pro-Life Arguments*, Available at <http://www.frc.org/brochure/the-best-pro-life-arguments-for-secular-audiences> (Last accessed on 6th April, 2012).

<sup>34</sup> M.A. Warren, *The Moral Significance of Birth*, 4 Hypatia 47 (1990).

<sup>35</sup> Margaret Olivia Little, *Abortion, Intimacy and the Duty to Gestate*, Ethical Theory and Moral Practice, Vol. 2, No. 3, Ethics: Meta, Normative and Applied (Sep) 304 (1999).

once its exercise involves occupying someone else's body.<sup>36</sup> This follows that the act of aborting a child may not be treated as 'murder' as the violation of the 'right to life' of a foetus is not as savage as the violation of the same of an independent person.<sup>37</sup>

What remains an essential point for this discussion is that it is not merely the 'right to life' of the foetus which matters, but the existence of it in some other person's body.<sup>38</sup> The unidimensional emphasis on abortion in discussions of the pregnant woman's bodily autonomy has obscured the complexity of pregnancy.<sup>39</sup> Subsequently what follows is the decision-making ability of the pregnant woman regarding something which is dependent on her.<sup>40</sup>

### III. DECISION MAKING PROCESS: COERCION & CONTROL

The scholarship over the unsafe abortions<sup>41</sup>, associated morbidity and mortality in women is tremendously huge.<sup>42</sup> The Governments have initiated several programs and schemes for the betterment of the abortion process.<sup>43</sup> However, the debate has restrained itself to making the abortions safer rather than looking at the decision making process that leads to the abortion. Especially in a traditional and religious country like India, changing the mind sets of the people becomes much more important than enacting a law.<sup>44</sup> To guarantee that law makes real changes on the ground, the efforts need to be more than mere legislation of a black letter law.<sup>45</sup> A policy which takes the line of 'Pro-Choice' or 'Pro-Life' merely looks at the issue of

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<sup>36</sup> Kamm, F.M., *Creation and Abortion: A Study in Moral and Legal Philosophy*, 18 (1992).

<sup>37</sup> Margaret Olivia Little, *Abortion, Intimacy and the Duty to Gestate*, *Ethical Theory and Moral Practice*, Vol. 2, No. 3, *Ethics: Meta, Normative and Applied* (Sep) 305 (1999).

<sup>38</sup> Celia Wells and Derek Morgan, *Whose Foetus Is It?* *Journal of Law and Society*, Vol. 18, No. 4 (Winter) 432 (1991).

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Unsafe abortion is defined as "a procedure for terminating an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking the minimal medical standards, or both", World Health Organization. *The Prevention and Management of Unsafe Abortion. Report of a Technical Working Group*. Geneva: WHO (1992).

<sup>42</sup> Saseendran Pallikadavath and R. William Stones, *Maternal and Social Factors Associated with Abortion in India: A Population-Based Study*, *International Family Planning Perspectives*, Vol. 32, No. 3 (Sep.) 122 (2006).

<sup>43</sup> Nishant Sinha, 'Yukti to provide abortion care to women', Available at [http://articles.timesofindia.indiatimes.com/2011-04-23/patna/29466119\\_1-abortion-services-abortion-care-safe-abortion](http://articles.timesofindia.indiatimes.com/2011-04-23/patna/29466119_1-abortion-services-abortion-care-safe-abortion) (Last accessed on 8th April, 2012).

<sup>44</sup> Elaine Byrne, *Five Minutes with Elaine Byrne*, Available at <http://blogs.lse.ac.uk/impactofsocialsciences/2012/02/17/5-minutes-with-elaine-byrne/> (Last accessed on 8th April, 2012).

<sup>45</sup> Speech delivered on 13<sup>th</sup> July 2011 by Lakshmi Puri, UN Women Deputy Director and Assistant Secretary-General, Available at <http://www.unwomen.org/2011/07/countering-gender-discrimination-and-negative-gender-stereotypes-effective-policy-responses/> at Geneva. (Last accessed on 7<sup>th</sup> April, 2012).

women's autonomy and the rights of the foetus.<sup>46</sup> However, what is essential is the question as to how the pregnant women go about deliberating their decision and the various factors which influence them.

### 3.1 Socio-Cultural Factors

A stereotypical view about the women says that their social interests are weaker than those of men, and that their capacity for the sublimation of their instincts is less.<sup>47</sup> Hence, the women have been considered the weaker sex for centuries together.<sup>48</sup> As mentioned above, the changing the mind sets of the people regarding the equality of gender is much more important than merely enacting a law for the same.<sup>49</sup>

Abortion happens to be an issue which, in a legal sense, is to be solely decided by the women.<sup>50</sup> The idea of 'personal autonomy' does not consider anyone else apart from the pregnant woman.<sup>51</sup> Further, 'informed consent' assumes the capacity to understand and evaluate information offered and the ability freely and without coercion to accept, refuse, or choose between alternative.<sup>52</sup> However, while deciding the issue of abortion, Indian women not only have to consider their own decision, but also various factors that influence them to arrive at their decision.<sup>53</sup> The localized norms against abortion need to be challenged and surpassed for a woman to have her own say in her decision.<sup>54</sup> Also, the stigma attached to the act of aborting a child, many of the times, is the reason for not opting to abort even if their personal willingness is otherwise.<sup>55</sup> In public discourse and from the perspective of women having abortions, however, the idea that there are "good abortions" and "bad abortions"

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<sup>46</sup> Andrea Smith, *Beyond Pro-Choice versus Pro-Life: Women of Color and Reproductive Justice*, NWSA Journal, Vol. 17, No. 1 (Spring) 124 (2005).

<sup>47</sup> Sigmund Freud, *Three Essays on the Theory of Sexuality*, in THE COMPLETE PSYCHOLOGICAL WORKS Vol. 7, 183 (1953).

<sup>48</sup> Jandhyala Tilak, *Inequality in Education by Sex in India*, Indian Journal of Industrial Relations, Vol. 18, No. 3 (Jan) 378 (1983).

<sup>49</sup> UN Women Deputy Director and Assistant Secretary-General Lakshmi Puri <http://www.unwomen.org/2011/07/countering-gender-discrimination-and-negative-gender-stereotypes-effective-policy-responses/> at Geneva

<sup>50</sup> Section 3 of the Medical Termination of Pregnancy Act, 1971.

<sup>51</sup> Rosalind Ekman Ladd, *Women in Labor: Some Issues about Informed Consent*, Hypatia, Vol. 4, No. 3, Ethics & Reproduction (Autumn) 39 (1989).

<sup>52</sup> *Ibid.*

<sup>53</sup> K G Santhya and Shalini Verma, *Induced Abortion – The Current Scenario in India*, Available at [http://www.searo.who.int/en/Section1243/Section1310/Section1343/Section1344/Section1974\\_9702.htm](http://www.searo.who.int/en/Section1243/Section1310/Section1343/Section1344/Section1974_9702.htm) 5 (Last accessed on 6<sup>th</sup> April, 2012).

<sup>54</sup> Kumar, A., Hessini, L., & Mitchell, E. M., *Conceptualising Abortion Stigma*, Culture, Health & Sexuality, 11, 626 (2009).

<sup>55</sup> *Ibid.* "Abortion Stigma" has been defined as 'a negative attribute ascribed to women who seek to terminate a pregnancy that marks them, internally or externally, as inferior to ideals of womanhood'.

stemming from “good” and “bad” reasons for having them is prevalent.<sup>56</sup> “Good abortions” are those judged to be more socially acceptable, characterized by a foetus with major malformations, or an abortion in the case of rape or incest.<sup>57</sup> “Bad abortions,” in contrast, occur without any reason or at later gestational ages and are had by “selfish” women who have had multiple previous abortions without using contraception.<sup>58</sup> Furthermore, people who support an abortion of a woman may also feel ‘courtesy stigma’ that arises from being associated with either the women who have had abortions or its providers.<sup>59</sup>

These kind of socio-cultural factors haunt primarily the developing societies and traditional countries.<sup>60</sup> India happens to be no stranger for such kind of belief systems.<sup>61</sup> The end result is that despite being granted an absolute right to abortion and bodily autonomy,<sup>62</sup> Indian women are incapable of using the same due to the socio-cultural believes which encircle them, making them disadvantaged.

### 3.2 Economical Factors

Poverty and Economical factors are cited as the reasons by a number of women for opting to abort the child.<sup>63</sup> Married women, especially, resorted to abortion mostly because of the pressures of childcare and responsibility of supporting family.<sup>64</sup> Material deprivation is among the more vicious pressures to abort, and is especially exacerbated by people who take the attitude that poor women should not be having children to be a “welfare burden.”<sup>65</sup> Unemployment and inability to afford additional children are the reasons which have been used not only in India, but around the globe.<sup>66</sup> While this remains the situation in a scenario where the state policy tilts towards the ‘Pro-Choice’ ideology, it worsens when a state adopts the ‘Pro-Life’ one.

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<sup>56</sup> Alison Norris, *Abortion Stigma: A Reconceptualization of Constituents, Causes, and Consequences*, Available at <http://www.guttmacher.org/pubs/journals/Abortion-Stigma.pdf> 4 (Last accessed on 8<sup>th</sup> April, 2012).

<sup>57</sup> *Ibid.*

<sup>58</sup> Furedi A, *Issues for service providers: A response to points raised*, *Journal of Medical Ethics*, 27(Suppl.), 33. (2001).

<sup>59</sup> Goffman, E, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY*. 45 (1963).

<sup>60</sup> Saseendran Pallikadavath and R William Stones, *Maternal and Social Factors Associated with Abortion in India - A Population-Based Study*, *International Family Planning Perspectives*, Vol. 32, No. 3 (Sep) 128 (2006).

<sup>61</sup> *Ibid.*

<sup>62</sup> Section 3 of the Medication Termination of the Pregnancy Act, 1971.

<sup>63</sup> Leela Visaria, *Abortion in India: Emerging Issues from Qualitative Studies*, *Economic and Political Weekly*, Vol. 39, No. 46/47 (Nov. 20-26) 5050 (2004).

<sup>64</sup> *Ibid.*

<sup>65</sup> Rachel MacNair, *Poverty and Abortion*, Available at <http://www.consistent-life.org/povertyabortion.pdf> (Last accessed on 7th April, 2012).

<sup>66</sup> Barbera Hewson, *Reproductive Autonomy and the Ethics of Abortion*, *Journal of Medical Ethics*, Vol. 27, Supplement: The New Ethics of Abortion (Oct) 15 (2001).

Pregnant women, who are economically incapable of nurturing a child, have two options in a Pro-Life state. First, to abort through unsafe and secretive means as informing the law enforcement department would result in criminal charges being framed against them.<sup>67</sup> Second, to carry on with the pregnancy making the situation even more miserable by adding another member to their family.<sup>68</sup> Most of the women are likely to take the first option as the second one would mean that they will have to live in the execrable conditions for a much longer period of time.<sup>69</sup> Women may choose the first option not just because of economic reasons, but also to meet their needs for confidentiality and quickness far better and at lower cost.<sup>70</sup> Additionally, the suffering of the child too is, at least patently, not felt when aborted.<sup>71</sup> However, while going for the first option of getting aborted, the women run the risks of severe health damage and loss of life.<sup>72</sup>

India happens to be a record holder of being the country with highest number of maternal deaths, out of which 13 per cent occur because of pregnancy-related causes.<sup>73</sup> Further, it has been estimated that more than 90 per cent of the abortions which happened in India have been done using unsafe means.<sup>74</sup> Though the practice of self-induction or using lay practitioners is declining among abortion-seekers in general, rural and economically disadvantaged women still rely on these methods.<sup>75</sup> This leaves no doubt that a 'Pro-Life' policy would impair the women in terms of health and life, and make them disadvantaged.

### 2.3 Family's Influence

When choices are provided to women, they do consult their family members and express

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<sup>67</sup> Leela Visaria, *Abortion in India: Emerging Issues from Qualitative Studies*, Economic and Political Weekly, Vol. 39, No. 46/47 (Nov. 20-26) 5052 (2004).

<sup>68</sup> Ellison, M. A., *Authoritative knowledge and single women's unintentional pregnancies, abortions, adoption, and single motherhood: Social stigma and structural violence*, Medical Anthropology Quarterly 17, 326 (2003).

<sup>69</sup> Alison Norris, *Abortion Stigma: A Reconceptualization of Constituents, Causes, and Consequences*, Available at <http://www.guttmacher.org/pubs/journals/Abortion-Stigma.pdf> 6 (Last accessed on 8<sup>th</sup> April, 2012).

<sup>70</sup> B.R. Ganatra and S.S. Hirve, *Induced Abortions Among Adolescent Women in Rural Maharashtra, India*, Reproductive Health Matters 10(19) 78 (2002).

<sup>71</sup> *Ibid.*

<sup>72</sup> Ravi Duggal, *The Political Economy of Abortion in India: Cost and Expenditure Patterns*, Reproductive Health Matters, Vol. 12, No. 24, Supplement: Abortion Law, Policy and Practice in Transition (Nov.), 131 (2004).

<sup>73</sup> *Estimates of Maternal Mortality*, World Health Organisation, UNICEF, (1996).

<sup>74</sup> World Health Organisation, *Abortion: A Tabulation of Available Data on the Frequency and Mortality of Unsafe Abortion*. 2<sup>nd</sup> Edition, Maternal Health and Safe Motherhood Programme, Geneva. (1994).

<sup>75</sup> K G Santhya and Shalini Verma, *Induced Abortion – The Current Scenario in India*, Available at [http://www.searo.who.int/en/Section1243/Section1310/Section1343/Section1344/Section1974\\_9702.htm](http://www.searo.who.int/en/Section1243/Section1310/Section1343/Section1344/Section1974_9702.htm) 6 (Last accessed on 6<sup>th</sup> April, 2012).



curiosity and fear.<sup>76</sup> They ask for information so as to proceed towards an ‘informed choice’.<sup>77</sup> However, this subsequently becomes the reason for being influenced by the same family members when it comes to taking a decision.<sup>78</sup>

Conspicuously absent from the discussion of these kind are the interests of third parties in the abortion, especially the interests of the prospective father, which, most of the times, prevail over the personal choice of the pregnant woman.<sup>79</sup> If gone against the husband’s opinion, this might result in a hostile environment at home. Moreover, unmarried women have known to abort the child mostly because the prospective father was not happy with the abortion.<sup>80</sup> In the end, this uncongenial environment at home leaves no choice for the women but to go ahead with the preferences of her family. This happens to go against the law as it stands today.<sup>81</sup>

However, what might surprise is that the law itself does not allow the mentally ill women to have the same bodily autonomy, at least on paper.<sup>82</sup> The consent of the pregnant women has been conveniently substituted with that of her guardian.<sup>83</sup> Though the courts have allowed mentally ill women to carry on with the pregnancy, the reason has never been that they deserve their own choices to be taken into consideration.<sup>84</sup> Despite ratifying the International Conventions such as CRPD<sup>85</sup> and CEDAW<sup>86</sup>, the state doesn’t seem to react and provide them the same autonomy the non-mentally ill women enjoy. This gives out a mandate to the legal guardians to exercise their personal choice over the pregnant woman. Moreover, if the mentally ill woman seeks for an abortion and the guardian doesn’t agree, it would in fact lead to forced motherhood. Such hostility makes the mentally ill pregnant women vulnerable and disadvantaged.

## 2.4 Health Effects of Abortion

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<sup>76</sup> K. Iyengar and S. Iyengar. *Elective Abortion as a Primary Health Service in Rural India: Experience With Manual Vacuum Aspiration*, *Reproductive Health Matters* 10(19) 57 (2002).

<sup>77</sup> Bela Ganatra, *Coercion, control or choice?* Available at <http://www.india-seminar.com/2003/532/532%20bela%20ganatra.htm> (Last accessed on 5<sup>th</sup> April, 2012).

<sup>78</sup> *Ibid.*

<sup>79</sup> Thomas W. Strahan, *The Critical Influence of the Father*, Available at <http://www.uffl.org/vol%209/strahan9.pdf> (Last assessed on 10th April, 2012).

<sup>80</sup> *Ibid.*

<sup>81</sup> Section 3 of Medical Termination of Pregnancy Act, 1971.

<sup>82</sup> Section 3(4)(a), Medical Termination of Pregnancy Act, 1971.

<sup>83</sup> *Ibid.*

<sup>84</sup> Supreme Court said that it was too late for abortion. Hence, carry on with the pregnancy. In *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

<sup>85</sup> Convention on Rights of Persons with Disabilities (Ratified by India in 2006), United Nations.

<sup>86</sup> Convention on the Elimination of all forms of Discrimination Against Women (Ratified by India in 1993), United Nations.

A pertinent fact which needs to be noted here is that the reason for legalization of abortion in India was not to provide the Right to Reproductive Autonomy or Bodily Autonomy to women, but to devise a mechanism for family planning so as to reduce the population growth.<sup>87</sup> Though Shah Committee<sup>88</sup> specifically denied that this was the purpose, there is little dispute to the fact that this is how the states saw the legalization of abortion.<sup>89</sup>

To achieve the ends of reducing the population growth, women's health has been thoughtlessly used as the means.<sup>90</sup> The health effects of abortion range from infections to breast cancer and infertility.<sup>91</sup> Such vulnerability of women and exposition of their health to severe consequence makes them disadvantaged.

#### IV. CONCLUSION

A very evident conclusion at this juncture is to emphasize the need of a 'Pro-Women' policy. It has been stated in the previous chapter that women, especially in the developing countries, are rarely able to exercise the right to bodily autonomy. Existing data and a growing number of studies seem to indicate that slow but steady progress is being made to reduce unsafe abortions and to reform abortion law, policy and practice to benefit women's health and lives around the world.<sup>92</sup>

It happens to be the responsibility of the state to play a role of 'guardian' of all its citizens, especially in a democratic one.<sup>93</sup> Though the legislation of Medical Termination of Pregnancy Act has given all the non-mentally ill women a 'Right to Reproductive Autonomy', what still remains out of reach are the facilities for safe and healthy abortion.<sup>94</sup> A welfare state would in fact live up to its adjective only when it concentrates on actual

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<sup>87</sup> Siddivinayak Hirve, *Abortion Law, Policy and Services in India - A Critical Review*, *Reproductive Health Matters*, Vol. 12, No. 24, Supplement: Abortion Law, Policy and Practice in Transition (Nov.), pp. 115 (2004).

<sup>88</sup> Government of India. *Report of the Shah Committee to study the question of legalization of abortion*. New Delhi: Ministry of Health and Family Planning, (1966).

<sup>89</sup> Phadke S, *Pro-choice or population control: a study of the Medical Termination of Pregnancy Act*, Government of India, Available at <http://tiss.academia.edu/ShilpaPhadke/Papers/215877/Pro-Choice-or-Population-Control-A-Study-of-the-Medical-Termination-of-Pregnancy-Act-Government-of-India-1971> (Last accessed on 11th April) (1998).

<sup>90</sup> *Ibid.*

<sup>91</sup> Physical Health Effects, Available at [http://www.abortionincanada.ca/health/physical\\_effects.html](http://www.abortionincanada.ca/health/physical_effects.html) (Last accessed on 13th April, 2012).

<sup>92</sup> Marge Berer, *National Laws and Unsafe Abortion – The Parameters of Change*. *Reproductive Health Matters*, Vol. 12, No. 24, Supplement: Abortion Law, Policy and Practice in Transition (Nov.), 4 (2004).

<sup>93</sup> Simona Goi, *Agonism, Deliberation, and the Politics of Abortion*. *Polity*, Vol. 37, No. 1, Fashion for Democracy (Jan.), 61 (2005).

<sup>94</sup> Lakshmi Ramachandar and Pertii J Pelto, *Abortion Providers and Safety of Abortion: A Community-Based Study in a Rural District of Tamil Nadu, India*, *Reproductive Health Matters*, Vol. 12, No. 24, Supplement: Abortion Law, Policy and Practice in Transition (Nov.), 141 (2004).

implementation of the rights it gives to its citizens.<sup>95</sup> A start would be to provide medical health care pre-birth as well as post-birth towards nurturing of the child, to those who intend to carry the baby. Moreover, the state should also develop the policy in such a way that the notions and mind sets regarding abortion are changed to meet the standards of the liberalized world.<sup>96</sup>

What remains, and continues to remain, is the importunate problem of the unsafe abortions.<sup>97</sup> Moreover, the health effects of abortion remain one of the most evident factors which the state has manifestly failed to consider. The need of the hour is a policy which articulates and, when implemented, works in a Pro-Women manner.

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<sup>95</sup> Mikael Hjerm, *Integration into the Social Democratic Welfare State*, Social Indicators Research, Vol. 70, No. 2 (Jan.) 119 (2005).

<sup>96</sup> Mark T. Brown, *The Morality of Abortion and the Deprivation of Futures*, Journal of Medical Ethics, Vol. 26, No. 2 (Apr) 106 (2000).

<sup>97</sup> Saseendran Pallikadavath and R. William Stones, *Maternal and Social Factors Associated with Abortion in India: A Population-Based Study*, International Family Planning Perspectives, Vol. 32, No. 3 (Sep) 122 (2006).

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