

EDITORIAL

Rights of Unborn child and social state of antenatal care

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Children, even the unborn ones should be protected from harm and injury by law and have a legal recourse to any harm caused. It should be made sure that where the fundamental rights given to citizens solely for the matter of their existence and being a citizen of the country. They have to be protected and let them live with dignity. Laws should be strict to make sure that a person can be held liable for causing harm to a person who at the time of the injury isn't born. In United states , The Unborn Victims of Violence Act, 2004 seeks to do just that. It defines that whoever engages in conduct that violates any of the provisions of law as listed in subsection (b) and hence causes death or bodily injury to a child who is unborn at the time, i.e. is in utero at the time the conduct takes place, is guilty of a separate offense under this section. It also mentions that apart from as provided in the paragraph, punishment for those separate offenses is the same as the punishment provided under Federal Law for that conduct which results in injury or death to the unborn child's mother. The act specifies that an offense under these sections does not require that the person causing the harm must be aware or have knowledge that the victim of the offense is pregnant or have intentions to cause death or injury to the unborn child.

However, In India, The Medical Termination of Pregnancy Act lists out the number of provisions guiding the process and the ability of how and when women can get their unborn aborted if need be. The law laid down makes it very clear that despite the woman's choice, the abortion had to be signed on and agreed to by a

Registered Medical Practitioner up till 12 weeks of pregnancy .After 12 weeks and upto 20 weeks of pregnancy Registered Medical Practitioners have to agree to do an abortion. Also, the act specifies the reasons upon which abortions can be carried out and on whom. This law is misused many times by people i.e. to be parent in our male dominated or favored society. To prevent this domination, another law named PCPNDT act came into force.

The problem in this law is that it refuses to acknowledge the existence of a large section of population who don't fall under the perview of the provisions mentioned

yet might be in need of abortions. It seems that the provisions of this law also take away the right of choice and privacy that should be given to every to be mother . The act says that terminations of pregnancies should be carried solely on medical reasons and nothing else. This makes that for other social, ethical and criminallegal reasons one has to approach court. The initial onus of responsibility is solely on registered medical practitioners and main culprits in society that is people involved in “illegal abortions” be it parents, their relatives ,rapists, law makers and others are unaccounted for.

It becomes evident that the tort law in the USA is quite evolved and citizenfriendly than the similar laws under Commonwealth countries such as India. Though still not perfect, the laws recognize the fact that there can be numerous reasons why someone would want an abortion apart from medical reasons and they assent to it, which is not the case in India.

In India, though the laws recognize the existence of an unborn as a legal person, It doesn't grant rights until the birth of the child and the state can interfere only after the unborn attains viability. Still it is not clear that how the law will protect the unborn and what is the duty owed to him/her. The UK too follows a suit similar to India where even though they recognize that the state owes a duty to the unborn, what duties are owned and how will they be carried out is far too ambiguous, which is inherently problematic.

The laws under Common law need to be reviewed to recognize the existence of other scenarios where fundamental rights such as Right to Life are not being protected by law per se and other interpretations of it. It cannot be said that the laws in the USA are perfect by far, but it also cannot be denied that they don't provide better protection by law for the mother as well as the unborn.

The another angle to this law is that the basic antenatal care and knowledge which is lacking in our country not only makes mother vulnerable to damage but also unborn. Unless people responsible for the neglect of mother are cornered by law, the welfare of unborn child is distant reality in many scenarios. The neglect of mother is done by to be mother herself and family for multiple reasons knowingly and unknowingly. Many times proper medical advice is not given and not followed. Law should make

society as well as service providers accountable for this neglect, then only future of unborn child in India will be better.