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Disability-Selective Abortions: Missteps Marring an Otherwise Progressive Outlook of a Regressive Society

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ABSTRACT

Abortion has come to be claimed as a matter of women's right, particularly, in disability-selective cases. While the Medical Termination of Pregnancy (MTP) Act, 1971 provides for instances where termination of pregnancy would be permissible, unsolicited termination of a foetus is a crime. This is an implicit recognition of an unborn child's 'right to life' and those that flow therefrom, including the right to live with dignity. An unethical demand to permit abortion in disability-selective cases has been witnessed, claiming right to reproductive choice. It is posited that a woman does not have an unqualified right to abort her child, diagnosed with disability or not, regardless of recent developments in law conferring on her a right to privacy and to bodily integrity. Sufficient safeguards exist in the MTPA to keep unsolicited abortions in check. To prevent women from relying on quacks for abortion, the Union Cabinet recently approved the MTP (Amendment) Bill 2020 which seeks to raise the upper-limit of termination of pregnancy from 20 to 24 weeks. With regard to disability, the Parliament enacted the Rights of Persons with Disabilities Act, 2016 to confer socio-legal insurance on those with disabilities. The same should be read as protecting unborn children with disabilities in light of fundamental principle of non-exclusivity with respect to discrimination. Best interests of the child should govern the matter of abortion and a child's 'right to life' should not be seen as conflicting with a woman's right to reproductive choice. The mere seeking of an unqualified right to abort a child with disability can be said to be an attack on the dignity of disabled persons as it portrays disability as something undesirable. The society should refrain from seeking to prevent the birth of the specially-abled while the medical and legal professions work harder for their welfare.

I. THE 'RIGHT TO LIFE' OF AN UNBORN CHILD

Domestic laws in India do not *explicitly* confer a 'right to life' on an unborn child, but binding international instruments, including *inter alia*, the Convention on the Rights of the Child

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(CRC), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR),[2] incidentally explicate such a right. For instance, Article 6(5) of the ICCPR preserves such right by mandating that death sentence shall not be carried out on pregnant women.[3] To put it differently, an innocent child is not to die along with the guilty.[4] In addition, the CRC explicitly commits States to ensure appropriate pre-natal healthcare for mothers, in furtherance of the recognition that pre-natal child is an independent right-holder, separate from the mother. Characterised as a fundamental human right under the United Nations Charter, 'right to life' is also most inviolably linked to the principle of non-discrimination. Thus, its efficacy lies in including all by excluding none.

Article 2 of the UDHR extends the rights under the Declaration (including right to life) to everyone, without distinction of any kind. The European Court of Human Rights (ECHR) has never completely excluded the possibility of application of this Article to the foetus. Instead, the ECHR has repeatedly applied the *'even-assuming'* formula which would not have been necessary if Article 2 had been considered to be entirely inapplicable. It is suggested in this regard that the difference between the human rights of a foetus and a child already born is illusory, *if any.* There wouldn't have existed specific laws on voluntary abortion as they do today in all jurisdictions had the foetus not had a life and rights of its own to be protected (dissenting opinion of Judge Ress).[5] It is also pertinent to note that the World Medical Association adopted the Declaration of Geneva in September 1948. This bound doctors to *"...maintain the utmost respect for human life from the time of* conception, *even under threat,"* and not to use their medical knowledge *"...contrary to the laws of humanity"* (Physician's Oath).[6] One year later, it adopted the International Code of Medical Ethics.[7] Each of these agreements was a direct response to the human rights abuses, including *inter alia,* the

[2] *Declaration on the Rights of the Child*, G.A. res. 1386(xiv), 20 November 1959; United Nations Human Rights Office of the High Commissioner, *Convention on the Rights of the Child* (1989), https://www.ohchr.org/en/professionalinterest/pages/crc.aspx, Preamble; *International Covenant on Civil and Political Rights 1966*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 UNITED NATIONS TREATY SERIES 171, Article 6(5); *International Covenant on Economic, Social and Cultural Rights*, 993 UNITED NATIONS TREATY SERIES 3 (1966), Article 10.2; *Universal Declaration of Human Rights*, UNITED NATIONS (1948), Article 2, https://www.un.org/en/universal-declaration-human-rights/index.html.

[3] *ICCPR, supra* note 1; *The United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty 1984*, UNITED NATIONS, Article 3.

[4] MARC J. BOSSUYT, THE GUIDE TO THE "TRAVAUX PRÉPARATOIRES" OF THE ICCPR (Dordrecht, Martinus Nijhoff Publishers 1987).

[5] Jakob Pichon, *Does the Unborn Child Have a Right to Life? The Insufficient Answer of the European Court of Human Rights in the Judgment Vo v. France*, 07 (04) GERMAN LAW JOURNAL 439-440 (2006).

[6] *Declaration of Geneva (1948)*, GENERAL ASSEMBLY OF WMA (Geneva Sep. 1948), https://www.wma.net/wp-content/uploads/2018/07/Decl-of-Geneva-v1948-1.pdf.

[7] *International Code of Medical Ethics*, THIRD GENERAL ASSEMBLY OF THE WMA (London Oct. 1949) [Duties of Doctors to the Sick: "*A doctor must always bear in mind the importance of preserving human life from the time of conception"*], http://www.cirp.org/library/ethics/intlcode/.

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euthanasia of *disabled children* and *abortions*, perpetrated in the past with the assistance of the German medical profession.

Under these circumstances, to deprive an unborn child of its 'right to life' based on technicalities of when it is that the child can be said to have *come into being,* ludicrously creates an unwarranted bar, undermining in the process the intended efficacy of such right. While in some situations, the Parliament in its wisdom may warrant *unqualified* denial of certain rights to a child until it is born (like property), right to *life* has been recognised as the most absolute fundamental right and its deprivation can flow only from legislative sanctions accompanied by appropriate safeguards. Indian laws, including *inter alia,* the Medical Termination of Pregnancy Act 1971, permit and circumscribe limits upon abortion, thus sanctioning deprivation of 'right to life' of unborn children under certain circumstances, but penalise violations, if any, of what is sanctioned, thus continuing to preserve the 'right to life' of unborn children against unsolicited violations.

Whether 'Right to Live with Dignity' is an Extension of 'Right to Life' or a Separate, Disjunctive Right? If separate, whether a Foetus has a 'Right to Live with Dignity'?

The Hon'ble Supreme Court has had occasion to observe in a catena of cases that the 'right to life' enshrined in Article 21 of the Indian Constitution includes the right to live with human dignity and all that goes along with it, including *inter alia,* the bare necessaries of life such as adequate nutrition, clothing, facilities for expressing oneself in diverse forms, freely moving about, mixing and commingling with fellow beings.[8] It is posited in this regard that a foetus (including one with disability) is prevented from being aborted in an attempt to *secure* such right(s). In contradistinction to popular opinion, it would be an *attack* on the right to be born and live with dignity of an unborn child and on the dignity of disabled persons as such to permit termination of a foetus that has been diagnosed with disability on that ground alone.

Be that as it may, disability-selective abortion has come to be claimed as a matter of 'right to life with dignity' by those living amongst us. In the Indian context, judicial pronouncements have given way to a 'right to live with dignity' *as an extension* of 'right to life'. Therefore, it would be a fallacy to see the former as a separate, disjunctive right; per contra, without guaranteeing the latter, the former cannot be said to inhere in any individual. Notwithstanding, dignity is a *relative* concept. What may be a matter of dignity for one may not be so for another. To snatch an unborn child's 'right to life' in the name of securing to it a 'right to live with dignity' is counter-intuitive, if anything. Such right to dignity is known and understood for

[8] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981 S.C.R. (2) 516; Unni Krishnan, J.P. and Others v. State of A.P. and Others, 1993 S.C.R. (1) 594.

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obvious reasons to flow from a *life*, and without a life, there remains no one to confer dignity over. Making matters worse is an implicit social sanction, contained in the argument, to the idea that the lives of people with disabilties (congenital or acquired) are not dignified. In today's time and age, such a regressive outlook prevents the society and medical science from propelling forward in an *inclusive* manner and allows resurfacing of the archaic, degenerate ideologies of the times past when the Nazis justified social selection in the name of legitimate health interventions. Back then also, the medical profession was instrumental in furthering the violation of sacrosanct principles of social insurance. What is unknowingly relished is an idea of annihilation, ofcourse – not of disability, but of the disabled despite our penal laws recognising in unequivocal terms that crime and disease need to be aborted and abhorred, not an individual. The same rule does not seem to have been applied in practice to disability, regardless of an evermore dire need to uplift public morale in this regard.

II. Does An Unborn Child's 'Right To Life' Conflict With A Woman's 'Right To Exercise Reproductive Choice'?

Abortion is often justified by asserting that it enables women to exercise their reproductive choice. It may be noted that women's 'right to bodily integrity' has been recognised in previous rulings of the Hon'ble Supreme Court in a *specific* context. Such right can be said to include her right to liberty over her own body and her decision to bear child. Without undermining these rights however, the Hon'ble Courts have had occasions to hold that the MTP Act could be seen to put *'reasonable restrictions'* on women seeking termination of their pregnancies.[9] For instance, Section 5 of the Act provides for an extension of the 20-week ceiling in case there is a *substantial* risk to the life of the mother or the child, in case of pregnancy caused by rape or if the foetus exhibits *abnormalities* that will cause *life-long trauma* to the *child and mother* if born. However, in no case should the 'right to life' of an unborn child be seen as running in conflict with a woman's right to her bodily integrity.

The World Medical Association Declaration on Therapeutic Abortion also notes *"...an apparent conflict between the interests of a mother and that of her unborn child."*[10] It is stated in this regard that whether precedence should be given to a woman's right to her bodily integrity (reproductive choice) or to an unborn child's 'right to life' is a matter of moral judgment, depending most of all on the circumstances creating the conflict. Ideally, a woman's 'right to

[9] Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1; Z v. State of Bihar, (2018) 11 SCC 572; Neelam Choudhary v. Union of India and Others, W.P. No. 6430 of 2018, Bombay High Court.

[10] André den Exter, WMA Declaration on Therapeutic Abortion, International Health Law and Ethics: Basic Documents (Part VII Medical Ethics) at 716 (Maklu Publishers, 3rd edn. 2015).

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bodily integrity' cannot be interpreted in a manner that takes away another's 'right to life', in this case, that of the child in her womb. In addition, a right cannot be exercised in such a manner that it has the effect of vindicating the right of another, unless warranted by circumstances laid down in law (for example, when mother's life is in danger due to pregnancy). Of significance in the matter is the Dublin Declaration on Maternal Healthcare that underscores foetal 'right to life' by noting that abortion is different from necessary medical treatments that may be carried out to save a mother's life at the expense of the life of the unborn child.[11] As guaranteeing equal treatment for people with disabilities epitomizes the goals of social justice and securing of suitable standards of public health, the matter needs to be considered at length by the Parliament to see if it is ethically correct to compare the two and if so, which needs to be given preference.

III. DOES A PREGNANT WOMAN HAVE A 'RIGHT' TO ABORT HER UNBORN CHILD WITH DISABILITY?

It is posited at this juncture that a possibility that the child may not lead a *'normal'* life is often portrayed in a negative manner in an attempt to secure permission from the competent authority to abort a foetus diagnosed with disability. As it happens, even normalcy is a *relative* concept and any handicap or illness acquired post-birth entails similar lack of normalcy, but people do not and cannot evade living the rest of their lives only because life would not be exactly 'normal'. The law does not grant permission or confer a right on anyone to die or to kill. To illustrate, a beggar may not be leading a *dignified* life, but by no means does that give him a right to die or to kill a child in his wife's womb because he thinks he can't give it a dignified life. Nobody has or can avail, the permission, let alone a right, to kill a child born with disability - whether congenital or not. Under no circumstance does any domestic law or international instrument recognize a 'right to die' or a right to sacrifice someone at the altar of dignity. Article 10 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) particularly states that, *"...every human being has the inherent right to life"* and that *"...its effective enjoyment by persons with disabilities on an equal basis with others"* shall be ensured.[12] Permitting then the termination of a foetus diagnosed with potential or actual disability can be viewed as calling for some comprehensive justification by the Parliament because, inadvertently, a classification is made for the purpose of conferring 'right to life', between children *born* with disabililty and *unborn* children diagnosed with disability; such

[11] *Translations*, DUBLIN DECLARATION ON MATERNAL HEALTHCARE (Sep. 2012) www.dublindeclaration.com/translations/.

[12] *United Nations Convention on the Rights of Persons with Disabilities*, G.A. res. adopted on 13 December 2006, U.N. GAOR Supp. (No. 49), U.N. Doc. A/61/106.

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classification would lack nexus with every purpose other than that of serving the best interest of the child. An *unqualified* right to abort shall not inhere even for actual disability and shall fail all tests of reasonable classification under Article 14 of the Indian Constitution. Viewed from this angle, the question of discrimination also comes up as reproductive choice of women is not extended to choosing the *sex* of the child. An unproblematic acceptance of disability-selective abortions, if given a nod under the guise of vague directions or legal provisions, will go on to show that disability, unlike gender/sex, is *undesirable* per se and life of a person with disability is not worth living. Every law, existing and contemplated, has to ensure that it does not diminish in any way, let alone devour, the value of persons with disabilities or of their lives by presenting the prevention of birth of children diagnosed with disabilities as a healthcare intervention deemed just by the trustees of the law of the land. Accordingly, the impending MTP (Amendment) Bill, 2020, which recently obtained the Union Cabinet's approval and was celebrated by 'pro-choice' advocates as a recognition of women's '*absolute* right' to abortion[13], does not and should not be understood as conferring a woman an unqualified 'right' to abort a foetus with disability - especially not in furtherance of upholding her 'right to exercise reproductive choice', as that would be discriminatory and violative of Article 14 of the Indian Constitution. Essential, efficient and infallible safeguards have been built-in and continue to exist in the laws to ensure that progressive provisions aimed at protecting lives in danger, if any, are not eventually misused for lack of 'normalcy', when there is no susbtantial risk either to the mother or the child.

In addition and without prejudice to the aforementioned, it is avowed that if an *unqualified* right to terminate pregnancy, particularly disability-selective, was conferred on every woman as matter of reproductive choice, it may perpetuate a low threshold of acceptance of even the most minor deviation from what is viewed as normal, and a great desire for a 'perfect' child. Technological advances have made it easy to identify problems at an earlier stage of pregnancy. As a result, the parent(s) may be anxious to find out if the child has birth defects and may request termination even for curable defects of minor purport. Suffice it to say that all other medical conditions and/or diseases (even *incurable*) are addressed with health interventions aimed at reducing the impact of, or treating, the condition. But in the case of a foetus with disability, it is an intervention in the nature of abortion that is frequently sought, the likelihood of which intervention to reflect a preference for *perfect* bodies and minds is not only beyond contest but is also strikingly offensive to the dignity of people living with various kinds of

[13] Neetu Chandra Sharma, *Keeping up with medical advancements, India moves towards liberalization of abortion rules*, LIVEMINT, (Feb. 4, 2020, 12:42 AM), https://www.livemint.com/news/india/india-soon-to-have-liberal-abortion-rules-11580756559537.html.

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disabilities. To quote the UNCRPD, *"…discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person"*; thus, if abortion will be promoted for one particular group, to eliminate characteristics they receive in the natural lottery, it would tantamount to discrimination.[14] Consequently, it is reiterated at the cost of repetition that, prohibition of unsolicited abortion is also a way of securing 'right to life' and a 'right to life with dignity' to a foetus with disability.

To appreciate the Indian Legislature's concern for providing socio-legal insurance for persons with disability, it may be noted that the Rights of Persons with Disabilities Act[15] was enacted in 2016 and it became operational on 19 April 2017, superceding the 1995 legislation on disability. Section 3(3) of the this Act provides that a *person* with disability shall not be discriminated against by reason of such disability, unless it is established that the impugned maneuver was/is *"a proportionate means of achieving a legitimate aim".* Section 9 mandates that no *child* be removed from his/her parents' care on ground only of disability except when it's competently ordered so by a Court considering the child's *best interest.* In case of parents' failure to maintain a child with disability, the Act provides that such responsibility *shall* lie upon near relations, or on the community, and sometimes on state-run shelter homes or those run by NGOs, as deemed fit by the Court directing so. The Act neither expressly excludes nor includes an unborn child within the ambit of *'person',* but the Legislature's intention can be appropriately gathered by relying on rules of interpretation to read the statute as a whole; a competent Court would not be wrong to protect an unborn child's life and dignity under the statute if it is sought to be aborted on grounds of disability alone. Moreover, in case *'person'* is read so as to include an unborn child, parents seeking permission to abort a child on ground of disability would be subjected to further checks under this 2016 law, required as they would be to satisfy the Court that a *legitimate aim* solicits such action.

As a state-sanctioned procedure, abortion has been made permissible only when it is in the best interest of the child being aborted or immediately necessary to save the life of the mother. Theoretically, to postulate that a violation of the 'right to life' of a child *is* in the best interests of that child contradicts the very nature of human rights. But in practice, the need may present itself when the child is exposed to such risk that it may not be perceived as *viable.* However, to make such a judgment at any stage of existence on discriminatory grounds, of disability, age, *'wantedness'* and/or birth status is indefensible. At the heart of the best-interests-principle is the truth that children's rights are adults' duties. In that context, it is a vitally important

[14] *UNCRPD, supra* note 11.
[15] The Rights of Persons with Disabilities Act 2016, No. 49 of 2016.

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recognition that children from before birth are right-holders, as also evidenced by numerous treaties, including the UDHR, the ICCPR and the CRC. The UN Committee on the Rights of the Child in General Comment No. 9 (2006) also provides formal recognition to the fact that children with disabilities are entitled to *'pre-natal care',* and this right follows from the *'right to life, survival and development';* it is under this right that the Committee condemns 'systematic killing of children because of their disability'.[16]

Therefore, to say that there would be a threat to life with dignity if a child with disabilities is born would go on to reflect that children with disabilities do not lead dignified lives. If pre-natal diagnosis followed by disability-selective abortion is viewed as a legitimate medical and public health practice, it would amount to acknowledging that the characteristic of disability is not *desirable.* This practice would imply that people with disabilities should not be welcomed into the family or the world. It would also suggest that abortion is the morally correct choice when a foetus is diagnosed with disability. In practice, the screening of unborn babies with the resolve of aborting those diagnosed with disabilities even meets the UN's definition of acts of genocide which encompass imposing of measures intended to prevent births within the group. The mere *seeking* of such a right to abort under these circumstances should be deemed as an attack on the dignity of disabled persons for its portrayal of disability as something undesirable. Prevailed over by apathy, advocates of disability-selective abortion act unbeknownst of principles of fundamental importance while also failing to appreciate the innumerable examples of fulfilled lives lived by persons with disabilities. It is strongly averred that disability should be seen and accepted as an integral part of the human condition as also stated by the UNCRPD so that policymakers can focus on planning for a society which would accommodate disabilities, as it does for many other human conditions.

Considering legal sanctions, women do not have an unqualified right to terminate pregnancy at *any time* before birth of their child. Such permission, let alone right, has not been conferred by law. As per the MTP Act, abortion beyond 20 weeks of pregnancy is allowed only when it is immediately necessary to save the life of the pregnant woman. It is avowed that such regulation does not impinge upon a woman's *choice* to mother a child. The choice is available to every woman as to whether or not she wants to become a mother, but to put a clock to that status by saying she can denounce the status of her child as per her will till the time it is in her womb is preposterous. It is a bone of contention *legally,* but she becomes a mother and the child comes into 'being' before the child is actually 'born' and she has not been allowed an

[16] *General Comment No. 9 (2006), The rights of children with disabilities*, UN COMMITTEE FOR THE CONVENTION ON THE RIGHTS OF THE CHILD, 43rd session (Geneva Feb. 27, 2007), ¶ 17, CRC/C/GC/9, https://www.refworld.org/docid/461b93f72.html.

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unqualified *legal right* to put an end to the life of her unborn child only because she happens to be the one who bears the child. Defenders of women's right to abortion ('pro-choice') rely on wrongly interpreting the language in which human rights have been framed and provided for in domestic and international instruments to establish that they confer a right to abortion precisely because it is improbable that a new internationally binding principle sanctioning it as a fundamental right would be adopted.[17]

IV. The Provisions Of The IPC And The MTPA Circumscribing Limits On Abortion Are Not Unconstitutional

Prior to the MTP Act 1971, pregnancy could not be terminated in India without attracting penal sanctions under the Indian Penal Code.[18] Now however, termination of pregnancy is possible under the MTPA, if: its continuance would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health[19]; or if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.[20] Such termination is dependent, in addition, on the gestational age of the foetus. Based on the length of the pregnancy, its medical termination can be performed only up till the 12th week. If the length of the pregnancy exceeds 12 but not 20 weeks, it can still be medically terminated *provided* two registered medical practitioners (RMPs) give opinion in favour of such termination.[21] Section 5 of the Act, however, permits termination of pregnancy *irrespective* of its length upon such opinion being given by an RMP; in this case, the RMP should be of the opinion, formed in *good faith*, that the termination of the pregnancy is *immediately necessary to save the life of the pregnant woman.*[22] The Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994, it may be noted, is another statute that deals with foetal rights.[23]

In the past few years, many cases emerged in the courts where women filed pleas to abort their *unwanted* foetuses. In *Mrs. X v. Union of India,* the Hon'ble Supreme Court allowed termination of a 22-week old pregnancy after a seven-member Medical Board opined that allowing it to continue could '*gravely endanger the woman's physical and mental*

[17] Jakob Cornides, *Human rights pitted against Man,* 12(1) INTERNATIONAL JOURNAL OF HUMAN RIGHTS 107-34 (2008).
[18] §§ 312 and 313 of the Indian Penal Code, 1860 provide punishment for induced abortion.
[19] The Medical Termination of Pregnancy Act 1971, No. 34 of 1971, § 3 cl. (2) (i).
[20] *Id.,* § 3, cl. (2) (ii).
[21] *Supra* note 18, § 3, cl. (2) (a) and (b).
[22] *Id.,* § 5 [Every RMP who terminates any pregnancy is required within three hours from such termination to certify it in the said form, where the reason for terminating the pregnancy has to be specified (MTP Regulations 1975, Regulations 3(1) and 3(2), published in the Gazette of India dated 4 October 1975)].
[23] The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994, No. 57 of 1994.

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health'. Even though the Court opined that women's 'right to exercise reproductive choice' fell under the aegis of Article 21, the termination of foetus in the case, as in others of its kind, was allowed on the basis of the opinion of the Medical Board. In 2017, the Hon'ble Court had allowed a 13-year-old rape survivor to terminate her 32-week-old pregnancy, after taking cognizance of the *'mental trauma and sexual abuse'* suffered by her.[24] In the same year, a 22-year-old woman was allowed to undergo an abortion in the 24th week of her pregnancy after medical reports stated that the child had anencephaly - a condition where a major portion of the skull of the foetus does not develop. However, in the case of *Savita Sachin Patil and Another v. Union of India and Others,* the Hon'ble Supreme Court *rejected* the plea of a woman to terminate her 26-week-old pregnancy after citing two reasons primarily - firstly, the medical reports did not suggest any danger to the mother's life if she continued her pregnancy, and secondly, the foetus did not have *no* chance of survival. The medical reports in the case stated that the foetus was suffering from Down syndrome along with problems in the oesophagus, the heart and the abdomen but it was held by the Court that they did not *conclusively* say that the child would be born with physical or mental abnormalities and it was merely a *possibility*; the Hon'ble Judges also opined that the child *could* lead a normal life despite the possibility of it suffering from *some* deficiencies.[25] Therefore, the mandates of the MTP Act have been adhered to, as fair and legal, and not rendered unconstitutional by the courts of law while granting women 'permission' to abort.

Since 'right to privacy' gained judicial recognition, it often came to be contended that continuation of pregnancy should not be *forced* upon any woman and it should be a matter of her choice and voluntary consent, just like termination of such pregnancy cannot take place without her explicit consent. This is not a good argument, for termination can, at best, be compared with the *choice* to procreate and not with the choice to *continue* pregnancy. A woman must have the liberty to decide whether she wants to reproduce or not. But once she *voluntarily* engages in the act of sexual intercourse and becomes pregnant as a result thereof, another life begins to foster inside her. Twenty weeks therefrom, she cannot be allowed to arbitrarily terminate her child at any stage before birth because once she decides to continue her pregnancy, she does so with her voluntary consent and to allow her to fall back on her consent would be to permit her to toy with the life of her unborn child as though it wasn't the child's but hers alone. In times when women have finally earned independent recognition for themselves and have renounced men's entitlement over them as chattel, it is ironical that any

[24] M*urugan Nayakkar v. Union of India & Others, W.P. (C) No. 749/2017.*
[25] Savita Sachin Patil and Another v. Union of India and Others, W.P. (C) No. 121/2017.

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woman shall now exercise or claim *abortion rights* for she is the child-bearer. The Legislature, thus, seems to have merely provided sufficient safeguards under the Act for cases wherein the resulting pregnancy was not or could not have been contemplated by a woman, for instance, in rape cases, in case of a victim of incest, etc.; in such cases, it has been deemed just to confer permission to abort. Further, the impending MTP (Amendment) Bill seeks to raise the upper limit for termination of pregnancy from twenty to twenty-four weeks in light of medical advancements that can pick up anomalies in pregnancy but usually post the 20-week mark. The Legislature has been guided by the intention to prevent pregnant women from relying on quacks who can put them and their unborn children in peril; however, more informed reproductive choices are likely to be made by people if stringent abortion laws are put and remain in place and this balancing incentive cannot be lost sight of. While the move is guided by a liberal approach, pro-choice advocates have only been hailing an unwarranted interpretation of the Legislature's intention to catch up archaic laws with time and advancement.

Circumscribing of limits on abortion is also solicited if attention is paid to the primary purpose and importance of diagnostic techniques, which is to *remedy* any difficulties that arise or may arise for the mother and/or the foetus during pregnancy and/or after delivery; it is not to detect anomalies in the foetus and terminate it despite any anomaly found being curable. While medical technology has made it possible to detect problems in the foetus, it has also made it possible to *treat* such problems within the womb. For instance, foetal therapy is an advancing medical field that aims to *prevent* disability through the diagnosis and by treating problems *in-utero*. Though the science is still in its nascent stage, it is possible to make efforts to advance the field to treat pre-natal problems, instead of venturing onto eradicate in advance the kind it seeks to protect and provide for.

At last, the judgment in *Nicolas Perruche* case is worth noting for it draws attention to the more general issue of *inclusion* and *quality of life* of persons with disabilities, and on the *resources* devoted for ensuring decent care and not just survival. It emphasises the essential need for humane solutions to the recurrent problems that plunge the specially-abled, and in particular those who suffer from severe impairment, sometimes so great that it leads parents to prefer putting an end to their child's life rather than be witness to constant rejection and pain. In light of the same, it is averred that since the aim of economic development is the well-being of *all* citizens, allocation of an increased share of wealth that is produced, to the protection and the improvement of their health should be considered as a legitimate goal. This thought applies obviously to assistance given to the disabled. It is also worth emphasizing that not all

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disabilities are preventable; many are acquired during the course of one's lifetime. Is it not more desirable then that the medical and legal professions learn how to deal with diverse human minds and bodies and the society stop chasing the *chimera* of a *perfect* mind and body? If progressive countries, such as our own, do not consider this kind of solidarity as one among the many goals of their development plans, would they not lose their main purpose?

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