Chapter-II
Religious & Ethical Issues in Abortion
CHAPTER II

RELIGIOUS AND ETHICAL ISSUES

A. Religious Issues

India is the land of religions. Nowhere else is the texture of life so much impregnated with religious convictions and practices as in India.¹

The Indian Constitution provides that the state undertakes to respect and honour all religions.² It confers right relating to freedom of religion not only on citizens but also on all persons in India. These constitutional provisions guarantee religious freedom not only to individuals but also to religious groups. India being a secular state, there is no state preferred religion as such and all religious groups enjoy the same constitutional protection without any favour or discrimination. Secularism in India does not mean irreligion. It means respect for all faiths and religions. The state does not identify itself with any religion, but to respect and honour all religions equally.³

The influence of religion affects the very core of social behaviour, attitudes and values. The affiliation to a particular religious group, affects the reproductive behaviour.⁴ There can be no doubt that religion has been one of the important factors

¹ Bloomfield, M: The Religion of the Vedas 3(1972)
² Articles 25-28, Indian Constitution (guarantees right to freedom of religion).
³ Dr. Radha Krishnan in Secularism in India, P-127 (1968)
influencing the urge for physical union and procreation. Quite often the resistance of family planning has been tried to explain in terms of its incompatibility with the religious value system of a given community. The attitude of the members of every group towards policy of family planning is mostly determined by the religious injunctions prescribed for each of the groups.

a. Hinduism

Hinduism is an ancient religion practiced by hundreds of millions in India and abroad. One commentator describes Hinduism as,

... more than just a creed: it is a total culture, a way of life based on the belief in the unity of all creation. Hindus, see humankind not as any entity separate from animals, but rather as an integral part of the Universe that includes all living creatures. In Hindu doctrine, all living creatures, including insects, plants and trees, are thought to enjoy a kinship with one another and to be worthy of respect and life.

A Hindu’s life is a series of rituals and ceremonies, signifying the Hindu community’s attitude and conduct with respect to reproduction and life cycles. Of all these ceremonies and events, three are most important, i.e., birth, marriage and death. All the three are significant to the attitudes and conduct of Hindus with respect to reproduction and life cycle. But of the

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three, obviously, the functions and purpose of marriage is the most intimately involved on the approach to the fertility.

The Hindu marriage is *Samskara* (sacrament). From the ancient *Vedic* times, the Hindus have regarded marriage as a social and religious duty. According to Hindu doctrine, "no man or woman must die without receiving this sacrament." Marriage for girl is looked upon as natural and inevitable part of her life. Marriage is a beginning of life for girl as the bride enters through the gate into life of her wedding day." Hindus are by nature family oriented and consider the procreation a holy act. Children are the central purpose of the Indian marriage. Love, companionship, sex and pleasure occupy a secondary, though important place in married life. In many communities' prayers for the brides motherhood forms an essential part of the wedding ceremony. An Indian wife's ideal is motherhood and she lives under pressure both social religious and familial, attitude to early and prolific procreation.

The Hindu philosophy regards the procreation of a son as a religious sine qua non. Before his death, a Hindu must be father and leave behind a son to carry on his duties. A Hindu son continues the family line and perpetuates the name of his ancestors. A son continues to have a significant place in Hindu society for practical purposes of succession as well as for

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7 Mullas, D. Principles of Hindu Law, 599 (1966)
8 Karve, I.: Kinship Organisation in India, 130(1953)
9 Buchanan, H. On the soul of the Indian women: As reflected in the Folklore of the Kankan, 27 (1942)
10 J. Mayne, Hindu Law and Usage, 105 (1953)
emancipation of his parent’s soul after their death through the performance of rituals, which may be carried out only by son. The begetting of a son is holy and spiritual act as the son (Putra) delivered the father from the hell (put).\textsuperscript{11}

The Niyoga was practiced when a man was impotent or was suffering from some incurable disease or was dead and the family in accordance with its Swadharma authorized the husband’s brother or other Sapinda to beget a son on his wife.\textsuperscript{12} This is but only a brief survey of an average Hindu’s social and cultural environment, which signifies the desire of Hindus for children, especially a son. This incidentally often leads to the birth of a number of daughters before a couple begets a son. Now due to advancement of science and technology, it is possible to know the sex of unborn child before birth. The strong desire of having a son, generally leads the couple to abortion, if the foetus happens to be of a female one.\textsuperscript{13} The increasing popularity of amniocentesis for detecting and subsequently aborting the female foetus is one more expression of the fact that a large number of pregnancies in the country are aborted because of the desire for the son.

It is appropriate to discuss here the views of ancient Hindu sages regarding various modes of fertility control, e.g. abortion, sterilization and contraceptives. “Hindus believe that all life is sacred, to be loved and revered, and therefore practice ahinsa, or non violence.” All life is sacred because all creatures are

\textsuperscript{11} Sehgal, B.P. Singh. Women, Birth Control and the Law, 37(1991)
\textsuperscript{12} Jolly, Hindu Law and Custom, p.153 (1928)
\textsuperscript{13} Sunday (magazine published from New Delhi), p.17, Oct (1983)
manifestations of the supreme being. The Hindu practice of non-violence is connected to a belief in reincarnation: the repeated re-embodiment of souls in different species of life. The *Karma* generated in one’s present life determines whether one enjoys a higher or suffers a lower existence in the next reincarnation. Dr. T. K. Venkateswaran, a Hindu leader in the Parliament of the World’s Religions, writes that *Karma* is “the moral and physical law of cause and effect by which each individual creates one’s own future destiny”. He further notes, “All souls are evolving and progressing towards union with God”. The individual soul incarnates, evolving through many births and deaths, until all the Karmic results, good and bad, are resolved. Hinduism teaches that abortion, like any other act of violence, thwarts a soul in its progress toward God. However, it is not clear whether classical Hinduism contains specific prohibition against abortion or not. Some references in *Atharvaveda* disclose that abortion was known in *Vedic* age, but it is not clear whether or not such abortion were regarded as criminal. Reference to abortion found place in the thoughts of many Hindu sage thinkers, which was presumably either because of the gravity they attached to it as a sin or because its incidence was not insignificant. Foeticide was forbidden and classified as murder equivalent in gravity to the neglect of *Vedas*,

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16 Sacred Laws of Aryas, quoted in Sehgal, B.P.S.Supra note 9, p.38
incest and drinking of spiritual liquors. Manu declared a woman who had procured abortion as an outcaste or murderer of her husband or of a Brahmin. Yagnavalkya said that if a woman kills her foetus, she should be abandoned. Katyana contained a remarkable statement that even a Brahmin deserves to be killed if he is guilty of causing abortion. Nirukta considered abortion as one of seven sins (other six sins are theft, violating the bed of guru, murder of Brahmin, continued performance of sinful acts, telling a lie as sinful matter). Vardha-Harita prescribed that in the case of a woman who destroyed her foetus, her husband should have her nose, ear and lips cut off and then she should be banished. Similarly in Mahabharata it is mentioned that letting a woman’s Ritual (fertile period) go waste was a sin tantamount to embryo murder. Ayurvedic text also refers to the knowledge and practice of abortion. They have generally discussed the causes responsible for the loss of foetus as by taking certain foods or drinks, doing violent motion or exercises or giving direct blows to abdomen etc. These texts recommend the avoidance of such acts along with prescription of the treatment for the prevention of abortion and restoring the disturbed pregnancy. In modern times, India’s greatest apostle of non-violence, Mohandas Gandhi, has
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written: - It seems to me clear as day light that abortion would be a crime.\textsuperscript{25} The international periodical Hinduism Today acknowledges: “Across the board, Hindu religious leaders perceive abortion at any stage of foetal development as killing (some say murder)… and as an act that has serious karmic repercussions”. For example, Swami Kamalatmananda of the Ramakrishna Monastery in Madras, India, has said: “No human being has the right to destroy the foetus. If having a baby is economically and socially problematic, one can very well take precautions to avoid such unwanted birth rather than killing the baby. Precaution is better than destructions.”\textsuperscript{26}

Thus it is clear from the above-mentioned text that the basic view that Hinduism has abortion is that it is strictly forbidden and is regarded as a crime. It seems that the Hinduism believes that the life begins at conception… Thus, as the embryo-foetus is a human being it has, according to Hinduism, the right to protection by law. Hinduism teaches that foetus is a living, conscious person needing and deserving protection. The concept of sterilization was quite unknown to the ancient Hindu society. However the sexual organs could be cut as a punishment in certain cases. Gautma prescribed the excision of the male organs for a Sudra who sexually approached a woman of higher Vernas. As far as contraceptives are concerned no religious books has ever expressly permitted the use of contraceptives for regulating fertility. Kamasutra no doubt

\textsuperscript{25} Mohandas Gandhi, All Men Are Brothers, Autobiographical Reflections (New York: Continuum, 1980), p. 150
\textsuperscript{26} Hinduism Today, March 1986
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talks of coitus interrupts as a contraceptive, which is now propagated widely. Mahatma Gandhi, a great social reformer held the use of contraceptive to be equivalent to prostitution and condemned its use. His objections were rooted in religion and tradition, but they were never imposed in India by any organized religious authority.

The effects of these religious edicts have been attenuated in practice when a couple is faced with a situation where it is to take a decision about planning the family. Since their religious rituals affect majority of Hindus, they are liable to consider the termination of pregnancy and sterilization and contraception against religion.

b. Islam

Muslims constitute the largest minority group in India. More recently there has been a good deal of discussions as to how far Islam permits the use of family planning in general and abortion for the purpose of population control in particular.

Islam is the natural way of life. It is a natural religion for mankind. All the rules laid down by it, individual as well collective, are based upon the fundamental principle that man should behave and act in consonance with natural laws that he finds working in this Universe, and that he should refrain from a

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course of life that might force him to deviate from the purposes for which nature is operating. The Holy Qur’an informs that Almighty God has not only created everything that we find in the universe but has also endowed it with an instinctive knowledge of the ways by which it can most suitably perform the task assigned to it in the general scheme of things:

“Our Lord is He Who gave every thing its peculiar form and nature, then guided it aright (i.e. showed it the way following which it can fulfill the purpose for which its creation was due).”

Every thing that is there in Universe is engaged in the performance of its duty in complete submission to the will of God. That is how they must behave. No one has the power or capacity to go against the prescribed course. Only man is an exception in this regard. He has the freedom to choose a course different from the one set forth by nature. He can refuse to submit and obey and conform. With the help of his intellect and the faculty of reason he can carve out new ways and forms of behaviour and may tread them to his discretion. The freedom is there but misuse of this freedom is bound to produce bad results. If man chooses to violate the laws of nature and the guidance God has given for individual and social life this is bound to lead him astray from right path and produce disturbing consequences here and thereafter.\footnote{Al-Qur’an, 20:50.} \footnote{Maudidi, Syed Abul Ala: Birth control, its social, political, Economic, Moral and Religious Aspects. P. 75 (1987)}
Quran further says— "And who is more erring than he who follows his desire without any guidance from Allah."\(^{31}\)

The deviation from the path lay down by the creator and violating the limits set by Him, is bound to be harmful to man. By adopting such a course he would be unjust to himself. Every transgression of the limits lay by the Lord and every act of irresponsible behaviour must eventually be to the detriment of man and greater violation leads to greater the penalty.

"And whoever transgress the limits of Allah he indeed does injustice to his own self."\(^{32}\)

This according to Qur'an, is so because to try to distort and disturb the scheme of things God has ordained and to violate the natural laws which govern and sustain the Universe and all that it contains is bound to unleash forces of destruction.

In Islam, human beings are the crown of creation and are God's viceregents on earth.\(^{33}\) They are endowed with reason, choice and responsibilities including stewardship of other creatures, the environment and their own health. Muslims are expected to be moderate and balanced in all matters, including health, illness may be seen as a trial or even as a cleansing ordeal, but it is not viewed as a curse or punishment of an expression of Allah's wrath. Hence patient is obliged to seek treatment and to

\(^{31}\) Al-Qur'an, 28:50
\(^{32}\) Al-Qur'an, 65:01
\(^{33}\) Qur'an, 2:30
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avoid being fatalistic. In Islam, life is sacred: every moment of life has great value, even if it is of poor quality. The saving of life is a duty, and unwarranted taking of life a grave sin. The Qur’an affirms the reverence for human life in reference to a similar commandment given to other monotheistic people. On that account, it is decreed that, who—soever killeth a human being ... it shall be as if he had killed all humankind, and whosoever seveth the life of one, it shall be as if he saved the life of all humankind. This passage legitimizes medical advances in saving human lives and justifies the prohibition against both suicide and euthanasia.

In Islam as in all religions, fertility is highly prized and children are a gift of God to bring “Joy to our eyes.” Family planning is lack of trust in the sustaining God. It may be cited from text of that: “There is no creeping being on earth but that upon Allah is its sustenance.” The Qur’an also says that if we place our trust in God, that is enough. Islamic faith is that, that God will not send a child without sending the means to feed it.

Contraception has a long history in Islam. Early Islam actually developed contraceptive medicine and instructed Europe on it. Avicenna the Muslim physician in his book “The Law” discusses twenty different substances used for birth control. When

36 Al-Qur’an, 5:32
37 Al-Qur’an, 25:74
38 Al-Qur’an, 11:06
Europe was in its "dark ages" Islamic culture with its stress on education kept the light of learning burning to the benefit of all the peoples. 39

The most common form of birth control when Islam began was called *Azl*, withdrawal, and coitus interruptus. All the major schools of Islam permit the practice of *Azl*, however there are opinion that consent of wife is necessary.

The Arab Republic of Egypt published a booklet called "Islam's Attitude Towards Family Planning" relying upon the permitted *Azl*, they argue that any method that has the same purpose as *Azl* and does not induce permanent sterility is acceptable for Muslims. They then go on to list methods such as the cervical cap, the condom, contraceptive pills, injections to produce temporary sterility, and the loop devices placed in the uterus to prevent implantation of the fertilized egg. 40

There are many reasons justifying contraception: reasons of health, economics, the preservation of the woman's appearance, and improving the quality of offspring. This last reason is important in Islam because the Islamic approach to contraception has a social conscience. It is concerned with the common good. Producing sickly, weak or underdeveloped or uneducated children is not good for the *Umma*, for the society. The Egyptian study says, "Strength of a nation is measured not by numbers or

40 Ibid
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quantities, but rather by qualities." The Hadith literature also says it is better to have few who are virtuous than many who are not.

The basic view that Islam has with regard to abortion is that it is forbidden. A favoured text to support this is:

"Do not kill your children for fear of poverty for it is We who shall provide sustenance for you are well as for them."⁴¹

Muslims regard abortion as a wrong and haram (forbidden), but many accept that it may be permitted in certain cases.

All schools of Muslim law accept that abortion is permitted if the continuing of pregnancy would put the mother's life in real danger. For the same, the Hanafi School is the most flexible on the abortion. It specifies that before the fourth month of pregnancy, an abortion may be induced if a woman's pregnancy poses a threat to the life of her already existing infant. The Maliki position prohibits an abortion after implantation has taken place, while the Shafi'I school maintains that at any stage after fertilization the zygote should not be disturbed, and interference with its development would be a crime. The Hanbli School by stipulating the payment of blood wit for causing a miscarriage shows that it regards abortion as a sin.⁴²

Moreover, even after ensoulment at which point, the foetus is regarded as having equal right with its mother-in the case of conflict, "this dilemma is resolved by the general principle of the

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⁴¹ Al Qur'an; 6:152
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_Shari'ah_: choosing the lesser of two evils. Rather than loosing both lives, the life of one should be given preference over the other, i.e., the mother's life.\(^43\) While Islamic tradition thus evinces some diversity of views, the general trend is clearly against the abortion; the same may be concluded by quoting the Qur'an as defending the sanctity of life:

"If any one slays a human being unless it be (in punishment) for murder or for spreading corruption on earth- it shall be as if he had slain the whole of mankind; whereas, if anyone saves a life, it shall be as if had saved the lives of the whole of mankind.\(^44\)

Thus it is evident from this quotation of Qur'an, that, every human being has the right to be born, the right to be, and the right to live as long as Allah (SWT) permits. No one may be deprived of life except for a legitimate crime as discussed above. The foetus is regarded by all schools of Islamic law as having the right to life. As indicated by the fact that the death sentence on a pregnant woman can be carried out only after she has given birth.\(^45\) Thus, this right to life is absolute in Islam: It cannot be overridden, even in cases of rape, incest or concerns regarding foetal deformity.\(^46\) Again according to Hanafi School, some Medieval Theologians permitted contraception and abortion in the first four months of

\(^43\) Id. p.91
\(^44\) Al Qur'an; 5:32
\(^45\) Abul Fadl Mohsin Ebrahim, supra note 42 at 102
\(^46\) Id. At 103
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pregnancy i.e., before the foetus is 'infused with life'.

Protection of mother's life

Though Islam gives much sanctity to the life but under certain circumstances one can sacrifice the life of foetus to save life of mother. The Qur'an states:

"Whosoever has spared the life of a soul, it is as though he has spared the life of all people. Whosoever has killed a soul, it is though he has murdered all of mankind."

Most Muslim scholars are of the view that a foetus in the womb is recognized and protected by Islam as a human life.

Islam allows abortion to save the life of the mother because it sees this as the lesser of two evils and there is a general principle in Sharia (Muslim law) of choosing the “lesser of two evils”.

Abortion is regarded as lesser evils because the:

- mother is the ‘originator’ of the foetus;
- mother’s life is well established;
- mother has duties and responsibilities;
- mother is part of a family; and
- allowing the mother to die would also kill the foetus in

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47 Id. At 205
48 Al Qur’an 5:32
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most cases. 49

Provision for the child

The Qur’an makes it clear that a foetus must not be aborted because the family fear that they will not be able to provide for it – they should trust Allah (SWT) to look after things:

"Kill not your offspring for fear of poverty; it is We who provide for them and for you. Surely, killing them is a great sin." 50

If it is confirmed in the early period of pregnancy that a foetus suffers from a defect that can’t be treated and that will cause great suffering to the child, a number of scholars say that it is permissible to abort provided that the pregnancy is less than 120 days old. And there is almost unanimous opinion that after 120 days an abortion is not permissible unless the defect in the embryo puts the mother’s life in danger. 51

Widely quoted is a resolution of the Islamic jurisprudence council of Makkah Al Mukaramah (the Islamic World League) passing a Fatwa in its 12th session held in February 1990. This allowed abortion if the foetus was grossly malformed with untreatable severe condition proved by medical investigations and decided upon by a committee formed by competent trustworthy physicians, and provided that abortion is requested by the parents

49 BBC-Region and Ethics-Abortion, a1-http://www.bbc.co.uk/religion/ethics/abortion/religionislam1.shtml
50 Al-Qur’an 17:32
51 BBC-Religion & Ethics-Abortion, a2-http://www.bbc.co.uk/religion/ethics/abortion/religionislam2.shtml
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and foetus is less than 120 days computed from moment of conception."

**Rape incest and adultery**

Abortion, where the mother is the victim of a rape or of incest or adultery, abortion for such reasons is never permitted.

An Islamic scholar, Shaikh M.A. Al-Salami, Third Symposium on Medical Jurisprudence, quotes it. "I believe that the value of life is the same whether this embryo is the result of fornication with relatives or non-relatives or valid marriage. In Sharia life has the same value in all cases". Shaikh Hussain Halawa, the chief representative of Islamic faith in Ireland, responded to a question as follows:

"Generally Islam strictly forbids suicide. Even if someone is sick according to Islam he is not allowed to commit suicide... if the baby or embryo is abnormal Islam does not allow abortion... if a doctor says that at most he will live twenty four hours, he still has the right to live these twenty four hours."

He further said of the baby born of rape as innocent and to be treated on the same footing as others:

He has not committed any sin, so the baby is completely at par with other babies. When he will

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52 Ibid
53 Ibid

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grow up he will have the same rights and the same duties.\textsuperscript{54}

In Egypt (where abortion is illegal) in June 2004, Muhammad Sayed Tantawi, the Grand Shaikh of Al Azhar, approved a draft law allowing women to abort a pregnancy that is the result of rape. The law would also make it legal for women to undergo an abortion more than four months after conception.

His decision caused controversy among other Muslim scholars. The mufti of Egypt, Ali Gomaa, said Tantawi’s decision was wrong and violated the Qur’an injunction that “forbids killing innocent souls.” He said, “It is haram [forbidden] to abort the foetus after life is breathed into it, in other word after 120 days.” However, he added that a woman could terminate a pregnancy if she was in immediate danger.

Islam does not permit abortion where an unwanted pregnancy is the result of unforced adultery.\textsuperscript{55}

Thus it is concluded that Islam forbids the termination of pregnancy after soul or “Ruh” is given to the foetus i.e. 120 days of conception. However, it is important to note that many scholars believe that life begins at conception and embryo deserves respect and protection at all stages of pregnancy.

Thus the general Islamic view is that, although there is some form of life after conception, full human life, with its attendant rights, begins only after the ensoulment of foetus. On the basis of

\textsuperscript{55} BBC-Religion & Ethics-Abortion, supra note 49
interpretations of passages in the Qur’an and of saying of prophet (pbuh), scholars agree that ensoulment occurs at about 120 days (4 lunar months plus 10 days) after conception. All authorities strictly forbid abortion after ensoulment, but the vast majority does make an exception to preserve the mother’s life. If a choice has to be made to save either the fetus or the mother, but not both, then the mother’s life would take precedence. She is seen as the root, the foetus as an offshoot.

Thus the basic view that Islam has about abortion is that it is forbidden and is crime except it is proven by medical experts that the mother’s life is in danger...Muslims believe that life begins at conception...Thus as the embryo-foetus is a human being it has, according to Islam, the right to protection by law...Islam is against abortion with the exception that if the mother’s life is threatened by continuation of the pregnancy, which is proven by specialist doctor.

c. Christianity

The attitude of the Christian churches towards population policies and movements is a subject of growing social and political importance throughout the world. Scientist, eugenics and social planners who in past might not generally have felt called upon to intervene in doctrinal disputes about the nature of sex and

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sin increasingly find themselves involved in debates about marriage principles and family planning practices which raise issues as much theological as sociological.\(^{57}\)

During such a period, when the area of public controversy widens and problems raised become more acute because of new chemical and biological researches it will be useful to outline the history of Christian Church's teaching on contraception.

For centuries the Christian doctrine regarding deliberate family limitation was clear cut and unambiguous. The primary aim of marriage (sexual intercourse) was procreations of children. Secondary aim such, as mutual help between husband and wife or the alleviation of concupiscence was much less important in the marriage relationship. Any artificial interference with the natural process of coitus and conception was contrary to the laws of God, and must be condemned as gravely sinful.

**The religious attitude to therapeutic abortion**

In the strongest terms, Christians reject the practice of induced abortion, or infanticide, which involves the killing of a life already conceived (as well as the violation of the personality of the mother) save as a dictate of strict and undeniable medical necessity. It is agreed that abortion should be permitted in situations where continuance of the pregnancy represents a

\(^{57}\) Flann Campbell, "Birth control and the Christian Churches", in population, Evolution and Birth Control, 2\(^{nd}\) (ed.) (Assembled by Garrett Hardin) p-212 (1969)
substantial medical risk to the life of the mother, even if in a few exceptional cases this requires direct rather than indirect abortion.

Nearly all Protestants have come to accept therapeutic abortion.\textsuperscript{58} Beyond this, protestant opinion is divided, though it is quite possible that majority opinion would support the legalization of abortion upon an extended list of grounds. The Church of Rome, on the other hand, remains adamantly opposed even to therapeutic abortion.\textsuperscript{59} On this view, induction is not morally permissible even to save the life of the mother.

The historical reason for the catholic objection to abortion is the same as for the Christian Church’s historical apposition to infanticide: the horror of bringing about the death of an unbaptized child. Dying in original sin, without the sacrament of baptism, the child is condemned to eternal punishment.

According to Roman priesthood, every man has a right to his own life, which may not be taken from him by the act of another. An embryonic child is as much a human being, and therefore has as much right to life, as an adult; consequently all abortive operations are murder. Being sinful and cannot be justified by a good end.\textsuperscript{60}

Professor Mc Allister says simply that ‘abortion is wrong because embryo is a person from the first moment of

\textsuperscript{58} Harold Rosen, Therapeutic Abortion p-153 (New York, 1954)
\textsuperscript{59} Frederick L. Good and Otis F. Kelly; Marriage, Morals and Medical Ethics (New York, 1951)
\textsuperscript{60} Id at p.180
Catholic position seems to some extent to be assailable even within its own presuppositions. If the foetus has a right to life, so has the mother. Situations occur in which a surgeon has to choose between destroying the foetus in order to save the mother's life, and allowing the mother to die in the hope of saving the foetus. Such a situation presents a moral choice, which is inescapable. The Catholic preference of doing nothing to assist the mother amounts in fact to a preference of the foetus over its mother, if not a sentence of death for both. Such a preference was logical at a time when emphasis was placed upon the paramount importance of baptism; but if that argument is given up it appears difficult to defend.

Every ethical system proposes certain positive values to which it attaches importance; but compilation of such a list has to face the difficulty occasioned by situations in which one value conflicts with another. Merely to describe the values as natural rights does not solve this problem. The conflict may be either quantitative (one value conflicting with equal or greater quantity of the same value) or qualitative (one value conflicting with another value). An example of a quantitative conflict is the following: Suppose that a dike threatens to give way, and the actor is faced with the choice of either making a breach in the dike, which he knows will result in one or two people being drowned, or doing

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61 Mc Allister, Ethics with special Application to the Medical and Nursing Professions, 2nd ed. P. 223 (Philadelphia, 1955)
nothing, in which case he knows the dike will burst at another
point involving a whole town in sudden destruction.\textsuperscript{62} In such a
situation, where there is an unhappy choice between the
destruction of one life and destruction of many, utilitarian
philosophy would certainly justify the actor in preferring the
lesser evil. A philosophy that, like the Catholic, purports
absolutely to forbid the doing of evil in order to procure a greater
good may seem at first sight to counsel a policy of inaction in
such circumstances. There is, however, a Catholic doctrine that
may be used, if the canonists so desire, to reach the utilitarian
result. This is the doctrine of double effect. It is sometime found
that an act has two consequences, one good and one evil. If the
actor intends the good consequences, his act may be rightful in
Catholic eyes although he realizes that it will also have the bad
consequences, provided that he does not ‘will’ the bad
consequences, but only ‘permits’ it to take place, and provided
that the good consequence is of a positive value equal to or greater
than the consequence here called evil.\textsuperscript{63}

This doctrine of indirect killing (which is only a
particularized name of the doctrine of double effect) was used by
the Pope to allow a therapeutic abortion where the operation could
in some way be justified independently of the concept of abortion—
e.g. where the uterus is dangerously diseased.\textsuperscript{64} A second

\textsuperscript{62} Glanville Williams op. cit., 183
\textsuperscript{63} Id at p. 184
\textsuperscript{64} This is recognized in the Code of Ethical and Religious Directives for Catholic Hospital,
reprinted in MC Allister: op. cit., p. 396
application of the doctrine is in respect of ectopic or extra-uterine pregnancies, where a foetus grows in the ovary or abdominal cavity or (the commonest case) the Fallopian tubes, instead of in the womb. No absolute prohibition is now maintained of an operation to terminate such a pregnancy, because if the operation is not performed the death of both mother and child would be practically certain. Catholic doctors have come at last to take the view that an operation on a tubal pregnancy is permissible, because the killing is not direct but indirect.\textsuperscript{65}

The Ireland by its eighth Amendment on September 7, 1983 in its constitution, which became Article 40.3.3. The State acknowledges the right to life of the unborn and with due regard to the equal right to life of the mother.\textsuperscript{66}

In 1992 the Irish Supreme Court gave judgment in the \textit{Attorney General V. X and others}. Where diverging judgments were delivered in this. The judgment of Finlay CJ is often cited:

\ldots if it can be established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by the termination of her pregnancy, such termination is permissible.

A majority in the Supreme Court ruled that a threat of self destruction can amount to a substantial risk to

\footnotesize{\textsuperscript{65} Glanville Williams, op. cit; at 185
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the life of the mother.\textsuperscript{67}

In the strongest term, Christians reject the practice of induced abortion, or infanticide, which involves the killing of a life already conceived. Save as a dictate of strict and undeniable medical necessity.

Dr. Miller went on:

...We are agreed that abortion should be permitted in situations where continuance of the pregnancy represents a substantial medical risk to the life of the mother, even if in a few exceptional cases this requires direct rather than indirect abortion.

Dr. Trevor Morrow, addressed the committee on behalf of the Presbyterian Church in Ireland:\textsuperscript{68}

In 1982, in a full debate on the matters raised, a number of resolutions were passed. The general assembly declared their opposition to abortion on demand for purely social reasons or as a means of birth control. A resolution attempting to get support for abortion in the hard cases of rape or gross abnormality detected in the foetus was defeated and replaced with a resolutions stating that in exceptional cases where medical abortion might be necessary the most stringent safeguards should be provided to prevent abuse. Since that time there has been a report from a committee on ethical issues to our general assembly in 1993 on life before birth... This summarizes well our Church's current thinking. It again reinforces our theological stance which is that human life is

\textsuperscript{67} Fifth Progress Report, Abortion, Government of Ireland, p. 11 (2000).
\textsuperscript{68} The All Party Oireachtas Committee on the Constitutions, Government of Ireland p.69 (Dublin 1999)
sacred and uniquely valuable, we are made in the image of God, human life begins at conception, the taking of human life can only be considered in the most extreme cases. Again the 1992 report acknowledges the hard cases of rape, incest, and foetal abnormality and indicates that some Presbyterians would consider an abortion in such cases. As against this it seems clear that we are quoting ‘significant number of Presbyterians who are convinced by the arguments for the absolute rights of the unborn. For them the practical decisions are clear even if they are demanding and traumatic. In faith they believe that our God will provide the grace which is sufficient for those who willingly accept their burden as a labour of love.’

Dr. Laurence Ryan, spoke of the catholic tradition, on behalf of the Irish Bishop’s Conference:\textsuperscript{69}

...Every human life is unique and irreplaceable. No one should be treated as if his or her life were of less value than that of any other. Any statement of moral principles about how human beings should treat one another and any just legal system must be based on recognition of the dignity common to all.

The life of the mother is precious and unique but also the life of the child in the mother’s womb is equally precious and unique. Both lives are equally entitled to be treated as ends in themselves and to be protected from unjust attack. This is the

consistent teaching of the Catholic Church. Concern for the life of the mother go hand to hand with concern for her unborn child.

The religious bodies in general emphasized the need for education. Compassion and non-judgmental care for women faced with unwanted pregnancies. Views of the religious bodies on the issue of abortion in the cases of suicide, foetal deformity and rape or incest were that ...terminating the pregnancy, which in effect, may not help the women's plight and may lead her, when well, to look back with regret at what had happened and to be troubled psychologically with the consequences of an intervention that has, in fact, added to her difficulty rather than helped in the long terms. In situations of pregnancy after incest and pregnancy after rape, it may be argued that abortion in these cases is the lesser of the two evils and the compassionate solution. However, going back to the principle outlined in the 'difficult and emotive' situations of pregnancy after incest and pregnancy after rape where the Church has previously stood, it denies the personhood and right to life of the foetus and it can itself re-traumatize the mother. Establishing the circumstances, that pregnancy was due to rape, could clearly be very traumatic to the mother and the termination may be late because of her reluctance to come forward in these cases.\(^{70}\)

However, Presbyterian Church in Ireland, are of the view, that abortion was permissible to save the life of the mother where

\(^{70}\) Id. at p.73
there was a clear and substantial risk of suicide. They are of the opinion that such cases are very rare ... and also believe that suicide risk is very low, indeed pregnancy is protective against suicide but do believe that in rare case it can still occur.

Position of Catholic Church in regard to rape or incest, Fr. Paul Tighe spoke as follows:^1

When the pregnancy is the result of incest or of rape, the experience for the girl or the woman is truly horrific. She may react with resentment, anger and rejection of the pregnancy, which she can feel to be a continuation of the violation of her body. Nevertheless, however abhorrent and degrading the circumstances of the conception, a new human life have come into existence. It is innocent human life, a life given by God to live with God forever, a life, which has a right to be welcomed into the human community. To end this life by abortion is a further violation of the woman’s body and may in fact increase her distress.

Thus it was clear from the above discussion that most of the Churches were opposed to dealing with the issue of abortion, in the constitution alone. The Church of Ireland favours ... as the only practical possibility at present, the introduction of legislation covering such matters as definitions, protection and appropriate medical intervention, certification of real and substantial risk to the life of the mother and a time limit on lawful termination of pregnancy.

^1 Id. at p.75
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It may be submitted that Roman Catholic Church teachings that the victim of incest or rape has a right to seek medical help with a view to preventing conception is correct. However the Church's position is that where a pregnancy results, a human life has come to existence and to end this life by abortion is considered a further violation of the woman's body, which may in fact increase his distress. However morally a victim of rape or incest should not have to continue with the pregnancy if they do not wish to do so. No doubt rape is an extremely serious offence still, abortion should never be an option and that the unborn child conceived as a result of rape or incest has the same right to life as any other.

**B. Ethical Issues**

Ethics and human values undergo changes from time to time for any given situation as these are influenced by many changing environmental factors, which are not even uniform in different regions. With alterations in economic growth, social behaviour and attitudes, and in political situation, ethics and human values are subjected to immense pressure. Rapid scientific advancement, lopsided urbanization, spread of education, and expansion of health services, had added significantly to this dynamic process. Ethics is also sensitive to the legislative and administrative powers of various nations and to population growth.
Ethical issues in relation to abortion have not been insensitive to the above interdependent stress. And, therefore, what is considered right or wrong today in these matters, may not be looked upon some time later. It implies morality and moral obligations. One has to also realize that what is morally right is not the same as what is legally right or permissible; and, this is true of abortion.\(^2\)

Abortion is a peculiarly passionate topic, largely because many people invest their positions with a symbolic weight that transcends immediate social and legal issues. The most obvious examples of this tendency can be found in some segments of the women's liberation movement, on the one hand, and in some factions of those opposed to abortion, on the other. For each the way society solves the abortion problem will be taken to show just what is deepest values are. And those values have implications that extend far beyond abortion.

The Women's Liberation movement sees abortion as the most significant liberation of all, from the body and from male domination. The most effective solution to unwanted pregnancy, it removes the final block to full control of reproduction. Unless reproduction can be fully controlled, women will remain in bondage not only to their sexuality but, even more to those legions of male chauvinists who use female sexuality to their own domineering ends.

By contrast, many of those opposed to abortion see the issue as indicating the kind of respect society will show the most defenseless beings in our midst. If the life of defenseless foetus is not respected, then there is good reason to believe that the most fundamental of all human rights – the right to life – will have been subverted at its core. The test of the humane society is not the respect it pays to the strongest and most articulate, but that which it accords to the weakest and least articulate.

Of course, these arguments and symbolic weight they carry simply bypass one another. The opposition seems so fundamental, and the starting premises so different, that any meaningful debate – the kind that leads to give and take, concession and adaptation is ruled out from the start. Moreover, the very charges each side hurls at the other are of a psychologically intolerable nature. No vigorous proponents of abortion are likely to admit, either privately or publicly, that they sanction 'murder'; nor are opponents of abortion likely to admit that they sanction the suppression of women.73

Abortion performed for the sole purpose of the rejection of a pregnancy so as to avoid a normal birth is perhaps morally always wrong, and more advanced a pregnancy, the more it hurts, were the views held by the people upto the first half of the last centuries. It is only during the last four decades that induced abortion was

come to be seen differently. Ethics and values attached to the procedure have undergone a radical change and abortion has come to be liberalized by law in many countries of the world, including India. For convenience, it may be laid down as proposition, most of which should be readily recognizable to any one acquainted with the abortion literature.

(i) Abortion is a religious or philosophical issue, best left to the private conscience rather than to public legislation

This argument means that for some churches and some religious believers their positions are the direct result of religious teaching, this hardly entails the conclusion that the issue is thus intrinsically religious.

The claim that abortion is not a religious but a "philosophical" is surely true. But, then every serious social question is philosophical. What is justice? What is freedom? Those questions arise all the time, and they are philosophical (and legal) in nature. The answers to them shape legislation in a very decisive way. It is inconsistent to argue that the right of the foetus is exclusively a philosophical problem, to be left to individual conscience, while the right of the women is a matter to be protected or implemented legislatively. If it is legitimate to legislate on the latter (which it is), then it should be equally legitimate to legislate on the former.74

74 Id. p. 92
(ii) **To remove restrictive abortion laws from the books passes no judgment on the substantive ethical issues; it merely allows individuals to make up their own minds.**

That an absence of legislation allows freedom of individual choice is undoubtedly true. But it would be highly surprising if a social decision to remove restrictive laws did not reflect a significant shift in public moral thinking about the issue at hand.

In the instance of abortion, a public decision to leave the question up to individual reflects at least three premises of a highly philosophical sort.

1. That private abortion decisions have few if any social implications or consequences;
2. That there are no normative standards whatever for determining the rights of foetuses, except the standard that individuals are free to use or create any standard they see fit; and
3. That changes in law have no effect one way or another on individual moral judgments. A decision to remove abortion laws from the books is no more ethically neutral than a decision to put such laws on the books or keep them there.
(iii) Any liberalization of abortion laws, or a repeal of such laws, will lead in a long run to disrespect for all human life.

This is fundamental premise of those opposed to abortion. There is no evidence to support such a judgment, however, evidence rather than speculation is what is required.

In the first place, it is exceedingly difficult to correlate abortion attitudes throughout the world with any trend toward disrespect for nonfoetal life. On the contrary, insofar as liberal abortion laws are designed to promote free choice for women, there is a prima facie case that their intent is to enhance respect for the lives of women.

Secondly, there is no evidence to support a "domino theory" of the kind, which predicts a quick move from liberalization of abortion laws to the killing of the defective, the elderly and the undesirable.

Finally, since most of those who support liberal abortion laws either do not believe that foetal life is human life or do not believe that it is life which has reached a stage requiring social protection, it is unfair to accuse them of harboring attitudes which inevitably lead to atrocities against all forms of human life. This kind of judgment reflects more the moral logic of the group leveling such charges than the moral principles of those at whom the charge is leveled.\(^{75}\)

\(^{75}\) Id. p. 94
(iv) Abortion are “therapeutic”, and abortion decisions are “medical” decisions.

Abortion is not notably therapeutic for the foetus. Even in the instance of a foetus with a grave defect, abortion is not therapeutic. It may be merciful and it may be wise.

Perhaps, then, abortion is therapeutic for the woman who receives it. That is beneficial to her in some ways seems undeniable; she is relieved of an unwanted social, economic or psychological burden. But is it proper to employ language, which has a very concrete meaning in medicine – the correction or amelioration of a physical or psychological defect – in a case where there is usually no physical pathology at all? Except in the now – rare instances of a direct threat to a woman’s life, an abortion cures no known disease and relieves no medically classifiable illness.

Thomas Szasz has been an especially eloquent spokesman for two positions. The first is that abortion should be available on request in the name of individual freedom. The second is that essentially non-medical decisions should not be dressed in the mantle of ‘medical’ language simply because they require medical technology for their execution.76

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In a just society there would be no abortion problem, since there the social and economic pressure that drive women to abortion would not exist.

This proposition is a part of a broader political argument, which sees abortion as more than a symptom of unjust, repressive societies. To concentrate on abortion as a response to poverty, poor housing, puritanical attitude towards illegitimacy is a cheap and evasive solution. It achieves no more than reinforcement of unjust political and social structures and institutions.

A woman who wishes to have a child but is not socially and economically free to do so is not a free woman. Her freedom is only superficially enhanced by allowing her, in that kind of repressive context, to choose abortion as a way out. She is not even being given half the loaf of freedom, which requires the existence of a full range of viable options.

At the same time, however, there are some serious limitations to the notion that abortion is nothing but a symptom of an unjust society. It utterly ignores the fact, common enough in affluent countries, that large numbers of women choose abortion because they have decided they want no children at all, or at least no more children than they already have. They are acting not out of social or economic coercion but out of positive desire to shape and live a life of their own choosing, not dominated by unexpected pregnancies and unwanted children.77

77 Callahan, Supra note 73, p-97
(vi) Abortion is exclusively a women’s issue, to be decided by women.

The underpinning of this argument seems to consist of three assumptions. First, that there is no role for male judgment, intervention or interference because it is women who get pregnant and who have to live with the pregnancies. Second, the abortion laws are repressive because they have been established by male legislators. And, third, that the foetus is a part of a woman’s body and is thus exclusively subject to her judgment and desires.

Though, it may be agreed upon, that approval of a male, whether husband and/or father, should not be a legal condition for a woman to receive an abortion, this should not be construed to mean that nothing is owed, in justice, to the male. Even ignoring the well-known fact that woman do not get pregnant by herself, a few other considerations remain. At the least, there is an injustice in giving males no rights prior to birth but then imposing upon them a full range of obligations after birth. If the obligations toward a child are mutual after birth, why should there not be a corresponding parity of rights prior to birth?

About the contention that a foetus is “part” of a woman’s body. That a foetus is in a woman’s body is an evident biological datum. That it is thereby a part of her body, in much the same way that her heart, arm, liver, or leg is part of her body, is biologically false. The separate genetic constitution of the foetus, its rate of
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growth and development, and its separate organ system clearly distinguish the body of foetus from the body of the mother. However, it could still be argued that, because the foetus is in the mother's body, she should have full rights in determining its fate. But that argument is different from likening the foetus to any other part of a woman's body and then transposing the rules concerning the exercise of rights over one's body.\textsuperscript{78}

In view of the above discussion it may be said that abortion should be legally available on request up to the twelfth week of pregnancy; that abortion is morally justifiable under a variety of circumstances, like:

(a) the pressure of economic hardship coupled with the desire of obtaining more material comforts and luxury;

(b) the need for woman to work outside their homes to sustain their families;

(c) increasing education of the women, their independent thinking, and the realization that progeny is humanly controllable,

(d) the breakdown of families into smaller units, and the distances at which the family members started living as job opportunities widened;

(e) the control of diseases resulting in increased longevity and rapid growth of population and

\textsuperscript{78} Id. p-100

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(f) the damaging effects clandestine abortions and the financial exploitation connected with it.

But abortion should always be undertaken reluctantly and with a strong sense of tragedy; and that the humane society would be one in which women are neither coerced to go through with pregnancies they do not want nor coerced by social, economic, or psychological circumstances into abortion. One can not accept the position of those who would deny all respect to the foetus. Nor can one accept the position of those who hold that the right to life of the foetus is sufficient in all cases to override the right of women to choose an abortion. On the contrary one should accord the right of women to control their procreation a high status, as a crucial ingredient of the sanctity or dignity of life.