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ABORTION AND NATURAL LAW

Ms. Snigdha Rohilla*

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ABSTRACT

This research article aims to establish a link between the theory of Natural Law and the contentious issue of abortion. The Natural Law theory posits that it is the inherent right of a person to exist in this world of nature and ensures that no person must be devoid of this right. A person is born with this right and dies, withholding his right to exist. In the contemporary world, abortion is not only a legal issue but also a moral one which may depend on how different people view it. People's moral beliefs in life generally affect their views on abortion. Abortion is an issue that raises questions over one's inherent right to live and one's moral judgement that endorses their opinion on human life. The legal and moral aspect of this issue concerned with the woman's right to choose for herself is comparatively linear than whether the foetus should be considered a human being from the date of conception. Different views of people on when life begins make it complex and difficult to decide whether the termination of pregnancy is justified or not and whether the rights of the mother or the foetus should prevail in a given situation. As per Thomas Aquinas, Natural Law dictates that the "good must be pursued, and the evil must be avoided." This view of natural law is endorsed by the Double Effect theory, which ensures an action may have both good and bad effects, but it may still be morally permissible if the good outweighs the bad effects. Clashes of Natural Law with the sociological and feminist school of jurisprudence open a wide perspective that must be considered when it comes to the issue of abortion. Being the critics of natural law theory, sociological and feminist schools of jurisprudence argue that it does not sufficiently

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address the complexities of pregnancy or respect individual autonomy and choice. Proponents of these theories maintain that the natural law theory offers a principled, rather rigid approach to understanding the morality of abortion. This research paper contends that a nuanced and thoughtful application of natural law theory is imperative to grapple with the intricate moral complexities surrounding the contemporary issue of abortion.

Keywords*- Abortion, Foetus, Human Dignity, Autonomy, Morality, Esteem, Integrity.*

I. INTRODUCTION

An aseptic restroom dimly lit, a young woman on the verge of tears, fear and pain plastered on her face. She held the pregnancy test in her hand, and a chain of thoughts rushed through her head. Twenty-three years old, still in graduate school, pursuing her dream career. Certainly not ready for the responsibilities of motherhood.

Abortion. A subject much debated upon, some theories fall extremely left upon their view, some fall far right, while some fall in the midst. Abortion raises questions over one's inherent ethical and moral beliefs while also clubbed with letting the concerned individual embrace their autonomy. Nevertheless, the question is- is this "autonomy" inherent? Does this "autonomy" pass the constraints of the world's natural order? Natural law theorists aim to establish a delicate balance between intrinsic human values and morals regarding abortion. The contemporary debate around abortion poses questions on whether a woman must be allowed to abort a foetus and raises a question on the degree of autonomy she has over her body.

Natural Law enslaves abortion by keeping it within the sphere of morality. It asserts that the Law of Nature must be binding on all human beings and is inherently irrevocable by any legal, religious, or cultural belief. The elementary postulates of natural Law assert that the dignity of human life is of utmost supremacy. Nothing in this world of nature can take the supreme right of a human being to exist. However, a point of contention to this perspective does exist. If by 'morality,' natural law theorists claim the right of every human being to exist, then does morality not endorse the right of a human being to choose and propound an autonomous decision about their existence in their way? Does it not include the right of human beings to live by their autonomy when it comes to their bodies?

The nucleus of the entire debate on abortion is based on two main questions: Whether the termination of pregnancy is 'morally' justifiable, followed by the standing of an unborn child, and whether the child should be considered a 'human being' from the time of conception.

II. NATURAL LAW AND HUMAN DIGNITY

The philosophical and ethical theory of Natural Law defines 'human dignity' as the ultimate worth. The concept of human dignity, as derived from the theory of natural Law, is based primarily on the premise that human beings are the ultimate beings as affirmed by the order of the universe. This statement is based on the parent assumption that since human beings can exhibit free will and rationality, they are thus given the ultimate place in nature. Natural Law sees human beings as individuals having inherent esteem and integrity. It is a fact that a human being lives all his life protecting his dignity for his survival. In addition to this conception, natural law prescribes that certain laws are 'universal,' apply to everyone equally, and can only be understood through proper human reasoning.[1]

Thomas Aquinas, a 13th Century philosopher and a proponent of the Natural Law Theory, says humans are the ultimate creatures. He says that this discernment has been propelled upon a human being because of his capability to "reason" or realize the good power of his mind. He said natural laws are undebatable, and people are inherently bound to obey these laws. As propounded by St. Thomas Aquinas, the ultimate or the special status of human beings delivers an affirmation of Natural Law. He says that this Law is congenital, and as a result of following this Law, human beings can achieve the ultimate good in their lives. Such good would include giving primary importance to human life i.e., from conception to death. It can be said that a follower of Natural Law would inherently strive to 'live' and 'let live' to attain happiness and fruition.

The concept of Human Dignity is the nucleus of the debate on abortion. Those who oppose the act of abortion argue that it is the human dignity of the foetus which is at stake when an abortion is performed. Their parent argument depends on the assumption that a foetus in the womb is equally entitled to all the rights of a human being. By performing an abortion, the foetus' inherent sense of esteem and integrity is lost. Supporters of abortion argue that applying the concept of Human Dignity must apply equally to the woman's context. It is also a woman's inherent right to decide whether or not she wants to abort the foetus. They

1 VD Mahajan, *Jurisprudence and Legal Theory* (Eastern Book Company, Lucknow, 5th edn., Reprinted 2006, 1987)

argue that forcing a woman to continue unwanted pregnancy violates her 'autonomy' and, as a result, violates their 'Human dignity.'

III. ABORTION, NATURAL LAW, AND THE THEORY OF THE DOUBLE EFFECT

The concept of abortion has always sparked a debate in Christian cultures. The argument that human life is *sacred* and all humans have a moral duty to protect human life from conception to death, as propounded by the natural law theory, is also the teaching of the Catholic Church. According to the Catholic Church, abortion is considered immoral as the direct killing of an individual violates his inherent dignity and worth. Presumably, the whole argument of Natural Law about abortion is based on the single invariant observation that abortion involves taking away the dignity of a human being. This argument can construe the other foundational pillars, including the 'intentional' killing of an 'innocent' human being. The unborn child in the mother's womb is an innocent human. This point further reiterates that Natural Law and the Catholic Church consider an unborn child as a 'fully-grown human being.[2]'

To understand the correct application of Natural Law on the issue of abortion, it is essential to thoroughly filter the proponents of the principle of "Double Effect." It is a theory founded by medieval philosophers such as St. Thomas Aquinas. Only in the 20th Century did people start studying this theory and applying it to contemporary issues. In its elementary sense, the Principle of Double Effect says an act may have good and bad consequences. It answers whether committing a certain action to achieve one is justified. This theory, though, only allows for the act to be committed if the act is morally good in the eyes of society.[3] The *'good act'* may also depend on the societal stereotype where a particular group considers something morally justified and worthy of being committed.

In the case of abortion, the principle of Double Effect may be equated with a hypothetical. However, recurrent, and usual situations- a mother's life at risk, might also put the child at risk. Alternatively, a threat to the mother's life results from the child being the cause. In this situation, we can see that to save one life, one might have to *end* another. The good act here may save the mother's life, and the ill deed may be terminating the pregnancy to save the mother. Both the deeds, however, bring us back to the same question. Was the termination justified? Or was the act of terminating the pregnancy moral?

2 Loren G Stern, "Abortion: Reform and Law," *Journal of Criminal Law and Criminology* (1968)

3 Diane N. Irving, "Abortion: Correct Application of Natural Law Theory," *The Linacre Quarterly*: Vol. 67: No. 1, Article 6. (2000)

For an act to pass the manacles of what is good or bad, it is important to realize the essentials that invoke the theory of Double Effect. The act done must be *inherently* good. This argument does not convince the Catholic Church as, for it, the very act of abortion is inherently wrong. The presence of an intention to deliberately cause the death of a foetus must not be present for an act to qualify double effect. This essential may be met in case of a threat to the bearer's life, and natural law in this regard endorses the theory of double effect. Even though the whole position of Natural Law is based on the argument that a foetus is a 'complete human being' and that the right of the foetus 'must not be taken away,' the theory of double effect raises objections to the elementary definition of Natural Law. As far as Natural Law is concerned, it says that the 'intentional' killing of a human being may be inherently wrong. Still, in conditions where the death of a human being is 'unintentional' and unavoidable, an act done to achieve a greater good shall not violate the principles of natural Law. Natural Law, thus, endorses the theory of double effect in cases where performing a medical procedure saves the mother's life and where the death of the foetus is 'unintentional' and for the good of saving the bearer's life.

As per the theory, the act permitted (here, the death of the foetus) *must not be a direct means* to accomplish the good intended. Thus, the termination of the foetus must not be the ultimate means to achieve the good (say, saving the mother's life.) This proposition means that if an alternative action exists to achieve the intended action, it must be considered first. The theory also demands that the evil must be of a very high degree to permit the commission of the act. Sometimes, the bearer (or the concerned people) aborts the child because they do not want a baby of a particular gender or they want to keep their bodies physically as it is. Such cases would not convince natural law theory to perform the act of abortion because these acts are 'trivial' and do not pose any physical or mental harm to the bearer.[4]

The theory of Double Effect is generally used by those who support abortion in certain cases. These cases may include the questionable health of the mother, where the pregnancy may exacerbate the mother's physical and mental health; cases of rape and incest; cases of foetal abnormalities, where the child may be on the verge of suffering from defects that are not compatible with life. The theory of Double Effect parallelly applies to all these situations and acts as a defence to the argument supporting abortion. However, if we had only based natural Law on the sole argument of the 'right to live' and the 'right to exist,' natural law theory would not have considered such exceptions. A point of contention would be that if a foetus is not aborted as a result of being a 'complete human being,' why would

4 *Id.*

a bearer of that foetus not be considered equally important when the very foundation of natural Law is based on 'protecting' and 'preserving' life? If a foetus is not being aborted just because of being 'innocent,' then 'why should a woman, or the bearer who is herself innocent, be forced to take up a responsibility they did not even consent to? The theory of the Double Effect answers all these questions. The theory of Double Effect ensures this radical shift in the stance of Natural Law.[5]

IV. EXAMINING OTHER LEGAL PHILOSOPHIES' PERSPECTIVES ON ABORTION

The ongoing discourse on the issue of abortion is primarily focused on the constitutional, political, and moral factors of abortion rights. Thus, a jurisprudential perspective on the issue of abortion must focus on the stakeholders' challenges and, as a result, draw a logical conclusion to a particular standpoint on this issue. The issue of abortion is not only limited to the bearer and the child but also extends to the society as a whole. It also affects the laws contemporarily existing and those that would be formulated in the future. [6]

Different legal theories stand on different pedestals on the issue of abortion, and there can never be one correct and absolute theory that answers the discrepancy of this issue. The natural law philosophy, as we have seen, in its true sense, stands against the endorsement of the act of abortion. It says that the legal system in a society must be based on inherent moral principles independent of human interference. The natural law school generally asserts that abortion is inherently immoral from a moral standpoint by countering the assumption that a foetus is not a 'human being' per se. It asserts that a foetus is very much a human being and that killing a human being is a moral wrong. This view of natural law has been countered by the feminist theory of jurisprudence, arguing that natural law fails to recognize a woman's right to her body and her reproductive rights. The historical school of jurisprudence defines Law as an 'evolving entity' that evolves and organizes itself with time. This school of jurisprudence mainly focuses on a comparative study of 'what used to be' and 'what is.' The school does not have a varied opinion on the issue of abortion. Still, from the principles of this philosophy, we can conclude that this theory mainly talks about how abortion has passed the time constraints, how ancient and modern cultures differ, and on what lines. Some societies in the past have permitted abortion, and some have not. The historical school also demonstrates how people's perspective on abortion has changed over

5 Peter J. Cataldo, "The Principle of Double Effect," *Ethics and Medics (Braintree, MA: Pope John Center)* (March, 1995)

6 Mathotaarachchi, Kamani & Thilakarathna, K A A N. "A jurisprudential analysis on abortions: A perspective from natural law and sociological school of law", *International Journal of Law, Policy and Social Review* (2021).

time. This change in perspective can be understood through a historical shift in the legal status of abortion from being completely prohibited to its constitutional recognition in *Roe v. Wade* in 1973.[7]

A school of jurisprudence that focuses on the social and practical perspective on abortion is the sociological school of jurisprudence. It emphasizes the use of the concept of 'social engineering,' where the laws and policies developed in a society are an outcome of the social behaviors and attitudes that exist in a society. In the case of abortion, the sociological school buys the support of the concept of social engineering and says that abortion as an act must depend on the impact it would create in society. It says that 'practicality' must preside over 'morality,' and thus, it can be said that it holds contrasting views concerning natural law theory. Sociologists often criticize the natural law theory for endorsing 'individual' right rather than collective good. This criticism is proved by the precedence of the foetus' right over the mother as per the natural law theory. The sociological school opposes the thought of natural law school by attacking its assumption of universal human rights. This school explains how different societies may have different views on what constitutes a 'right' and how what might be a norm for one society may not even be a norm for another. It counters the natural law theory's contention that laws must be 'fixed' and 'unchangeable.'

V. CRITICS OF NATURAL LAW THEORY ON ABORTION

The two foremost critics of natural law theory seemingly come from the sociological and feminist schools of jurisprudence. As far as both schools are concerned, they recognize aspects of natural law that do not quite sit in the practical world. Roscoe Pound, a 19th-century American philosopher and a propounder of the modern sociological school of jurisprudence, lays down a "jural postulate" that delivers a wider perspective on the issue of abortion. He says that Law implemented in society is an instrument of social change. He says that Law must recognize society's strengths and weaknesses and strive to create a balance between the same. When applied to the issue of abortion, sociological theory, when looked at from Pound's perspective of "jural postulate," seems the most logical in the contemporary world. Pound defines jural postulate as a process by which one evaluates the complete interests of parties involved in a particular conflict. It says that a few parameters should be analyzed when a decision has to be made to bring justice to the people involved and the society. It helps identify what a law must protect and what it must not in any particular legal discrepancy.[8]

7 410 U.S. 113 (1973)

8 *Supra* note 6 at 6.

Regarding abortion, Roscoe Pound's theory of "Jural postulate" solves a huge aspect of the debate on this contested issue. The jural postulates mainly include evaluating the problems of a particular legal discrepancy and identifying the consequences of maintaining a particular standpoint. It objectively identifies the stakeholders involved and how it would affect society in the long run. Abortion is generally a conflict between the rights of the bearer and the foetus, and whose rights would prevail is a question that is difficult to answer. The jural postulates make it easier to evaluate these issues and thus hold that it is necessary to strike a balance between the rights of both.

Roscoe Pound's theory thus counters the natural law theory on abortion because it assumes a universal moral code, disregarding different social and cultural contexts. Additionally, it prioritizes the unborn child's right to life over a woman's autonomy and bodily integrity and is linked to religious and moral beliefs. Sociologists recommend that legal norms consider the social and cultural contexts in which they are applied and neutral principles should defend women's reproductive rights and bodily autonomy.

The feminist school of jurisprudence bases its argument on autonomy and a woman's right over their body and her reproductive rights. Feminists argue that women should be free to choose whether or not to carry a pregnancy to term without external regulation or control. They also criticize the natural law school for not acknowledging the social and economic factors that impact women's reproductive choices and deny women access to abortion services, which can adversely affect their health and well-being.[9] In 1973, the Supreme Court ruled in *Roe v. Wade*[10] that women have the constitutional right to safe and legal abortion. A major argument of this case was based on the feminist theory of jurisprudence. However, there have been numerous attempts to overturn this decision since then, particularly with the appointment of conservative justices to the court in recent years. If *Roe v. Wade* stands overturned, it would have significant consequences for women's reproductive rights and may result in restrictions on access to abortion, especially affecting low-income women, women of color, and those in rural areas who already face barriers to obtaining abortion services. In states with strict abortion laws, women may have to travel long distances and incur significant expenses to obtain an abortion, effectively making it illegal in some parts of the country and leaving them with no choice but to carry unwanted pregnancies to term. This goes against the feminist theory of jurisprudence. The Medical

9 Sauls, Vanessa, "Rewriting reproductive rights – A feminist perspective on abortion law and gender justice in the legal process" (2016)

10 *Supra* note 7 at 7.

Termination of Pregnancy (MTP) Act of 1971[11] is a significant legal ruling related to abortion in India. This act legalized abortion in specific circumstances such as danger to the mother's life, physical or mental health, rape, or fatal abnormalities. The act imposes a 20-week limit for abortion but allows for exceptions in cases where there is a threat to the mother's life or foetal abnormalities.

In 2017, the Indian Supreme Court made another significant ruling regarding abortion in the case of *Ms. X v. Union of India*[12]. The case involved a 35-year-old woman who wanted to terminate her pregnancy due to foetal abnormalities beyond the 20-week limit. The Supreme Court granted permission for the woman to undergo an abortion, affirming that a woman's right to choose her reproductive decisions is a fundamental right under the Indian Constitution.

The ruling was considered a crucial step in expanding access to safe and legal abortion in India, particularly for women who may have faced obstacles due to restrictive laws. It emphasized the importance of upholding women's reproductive rights and ensuring their access to safe and legal abortion services when required. The Indian Parliament approved an amendment to the Medical Termination of Pregnancy (MTP) Act of 1971 in March 2021[13]. This amendment permits the termination of pregnancy for certain groups of women, such as minors, differently-abled women, rape survivors, and victims of incest, up to 24 weeks. Additionally, the upper gestation limit for medical termination of pregnancy has been raised for particular categories of women, including those with severe foetal abnormalities.

VI. CASE STUDY: ABORTION NEEDS OF WOMEN IN INDIA: A CASE STUDY OF RURAL MAHARASHTRA

An Indian study called "Abortion Needs of Women in India: A Case Study of Rural Maharashtra" puts a deep emphasis on the rural perspective of women on the issue of Abortion. The researchers have collected data from prominent rural areas of Maharashtra and clubbed together the perspectives of women on certain grounds.[14] Such grounds include the general perspective of women on whether an abortion is a "right" of a woman or not; and an outlook on what factors drive the women to get an abortion in these demographics. The research also focuses on the marital dynamics affecting the adoption of the process to

11 Medical Termination of Pregnancy Act, 1971 (Act 34 of 1971)

12 (2017) 10 SCC 1.

13 Medical Termination of Pregnancy (Amendment) Act, 2021 (Act No. 10 of 2021)

14 Manisha Gupte, Sunita Bandewar, *et.al.*, "Abortion Needs of Women in India: A Case Study of Rural Maharashtra" *Reproductive Health Matters* 77-86 (1997).

terminate pregnancy- 67 women from different backgrounds were interviewed to establish their views, needs, and experiences, if any, related to abortion.

The findings of this study conducted in various rural areas of Maharashtra reveals a complex array of views on abortion. A significant number of women (around 70%) stand strongly in favor of abortion as a woman's "personal right," affirming that it is their exclusive right over their bodies. It must be noted that among this 70% of women, around 90% of unmarried women support abortion solely because of reasons concerning social stigma, shame, and avoiding familial pressures of marriage and humiliation. Unmarried women are deemed to be seen as "immoral" having sexual relations before marriage due to the existing patriarchy in the society.[15] This is however different for the ground where women opt for abortion if the contraceptives fail. About 33% of women support abortion in cases where sterilization has failed, whereas about 40% support it after reversible methods of contraceptives fail. This lacuna can be based on the realization that if a woman had sterilized herself with the thought of not having any more children, she should abort the child. Although some did not share the same view, they argued that abortion was a more complex issue than a delivery which is usually "natural" in nature. Abortion, for them, is an artificial process. It can have emotional and physical complications, unlike a natural childbirth.[16]

In the study, we also see that "Sex Selective Abortion" is a major issue that governs whether a woman would want to opt for an abortion or not. Around 45% of the women gave economic reasons and backed up the process of abortion, saying that a male child would be less demanding than a female child. This opinion is deeply rooted as a consequence of patriarchy in the minds of the populace.[17] The study also reveals a lack of awareness about the abortion laws existing in India, with a very few people understanding the legal provisions regarding the same. An interesting outlook generated out of this study reveals that the lack of information about the legal framework that women had, had some of them thinking that the signature of the husband (in case of a marriage) is required in order to get a legal abortion. This, however, stands not required.

In this study, Sociological Jurisprudence becomes relevant as the research delves into the societal attitudes and norms surrounding abortion. It illuminates how prevalent social constructs, including societal expectations and gender roles can shape legal structures and individual decisions. The study's focus on women's perspectives and encounters highlights the significance of comprehending the social milieu in which legal judgments are rendered.

15 *Ibid.*
16 *Ibid.*
17 *Ibid.*

Feminist Jurisprudence takes center stage in this study as it critically assesses the legal system's impact on women's lives. The research illuminates how laws, such as the MTP Act, can empower or disempower women, contingent upon their circumstances and societal pressures. The plea for a comprehensive re-evaluation of abortion laws aligns harmoniously with feminist principles that advocate for women's autonomy, agency, and equal rights.

VII. RESPONSES TO NATURAL LAW ARGUMENTS AGAINST ABORTION

The application of Natural Law on the issue of abortion is based entirely on two principles: a) that a person's inherent right to live and exist cannot be taken away, and b) that the person must be protected from conception to death by Law. The Natural Law view on abortion says that morality is universal and ubiquitous. The right not to take away the life of a being is based on this universal moral. The above argument can be challenged by considering different demographics and different cultures. Understanding this sociologically, what might be moral for one group might not be one for another. Morals are subjective and depend deeply on the cultures and demographics of society. It is also affected by individualism and 'personal' judgements. This subjectiveness may depend on factors such as philosophy and religion. This subjectiveness can be understood through a difference in the theological view of two profound communities; the Catholic Church regards abortion as inherently evil, whereas the Jewish view on abortion is at the opposite end. The Jewish Law, or "Halakah," approaches abortion very nuanced. Some Jewish cultures do not consider the foetus as a fully grown human until the 40th day of the gestation period (while some do); some consider aborting the child in cases where the mother's life is at risk, as against the opinion of the Catholic Church. For the Catholic Church, the foetus is a human being right from conception. In this case, the Jewish culture's morality lies in not aborting the foetus after the 40th day of gestation. In contrast, morality lies in not aborting the child in the Catholic Church. There is a difference in morality in both cases.

As Natural Law theorists argue, human life must be protected at all costs, and aborting a foetus would violate its sanctity and right to live. This argument is based on the assumption that a foetus is a complete human being and has all the rights of a natural person. It, however, can be challenged by the view of some feminist theorists that do not depend on the act of abortion on whether the foetus is a fully grown human being or not. For them, the act of abortion solely depends on the autonomy of a woman over her body. They argue that since a foetus does not have the moral standing of a fully grown human being and it cannot be proved that it is capable of a 'memory,' the right of a woman to make her reproductive

choices must precede over anything else.[18] In this argument, morality lies in giving the woman her right to choose for herself autonomously. As per Natural Law, if continuing the pregnancy is not medically viable for the mother to lead a healthy life, a foetus may be aborted at the identified stage of pregnancy. [19]Although often not included in the debate, we can also base our moral argument on the grounds of Sociology. A woman who is a grown-up human being, capable of reasoning and thinking, would always be a greater asset to society than a foetus suffering from disabilities not compatible with life if born. As a fully grown human being, the bearer of the child would be able to contribute towards building a society more than a foetus who would not be able to function freely and reasonably on its birth. This reasoning, however, is ideal to consider only in conditions where the child is suffering from disabilities so ingredient to his bodily functions that he is unable to live a decent life. Thus, the bearer would be a greater asset to society if saved.

A good percentage of arguments favor not aborting the child is based on the patriarchal presumption that since women are entrusted by nature to bear a child, it is the destiny of every woman in the world. The feminist theory of jurisprudence has duly countered this stereotype. Precedence of the right of the foetus is also majorly built upon this radical assumption that it is a duty of a woman or the bearer to carry a child just because they are given a womb by nature. In cases of rape and incest, a woman must not be forced to bear the child of a rapist, a person she does not know nor would want to know. It is unreasonable and unjustified to force a woman to bear a child out of a relationship she did not consent to. Suppose a woman is considered too 'immature' to understand the consequences of such a relationship or such an unconsented sexual act. In that case, it is also outrightly unreasonable to assume that she would be able to develop such maturity in the process of bearing the child for the next nine months. It cannot be justified to assume that she could handle the traumatic experience of bearing an illegitimate child and assume the responsibility of motherhood at a young age.

However, the traditional view on abortion is not always absolute; the debate on abortion is far more complex. Some natural law theorists do not only base their judgement on the 'sanctity' of a foetus but the woman or the bearer's right to control their own body. Different people have different opinions on what constitutes the parameters of maintaining the sanctity of human life. The philosopher David Hume propounds that a human being comprises memory and perception. It is impossible (and almost far-fetched) to prove the presence of a memory of a foetus. Since the foetus has not developed the organs that

18 Hume, *A Treatise on Human Nature*, Book I, part IV, Section 6

19 *Supra* note 4 at 5.

facilitate carrying a memory, it is thus not wise to consider a foetus a 'complete human being.'[20]

VIII. INTERNATIONAL ASPECTS OF THE ISSUE OF ABORTION

Drawing a comparative analysis of the abortion laws and the respective rights in different countries would reveal a diverse range of approaches to avail abortion services in different countries. Countries like the USA, Canada, Australia, and the United Kingdom, presumably the developed countries would have comparatively better reproductive infrastructure as compared to developing countries such as India, China, and Bangladesh. In the USA, the Supreme Court mandated the closure of approximately 50% of abortion centers. A law, regarded as "backward" in 2013 led to a reduction in the number of operational abortion clinics from 41 to just 20. If the Texas law is more stringently implemented, it may lead to just around 10 abortion clinics being operational in the state.[21] It would thus be an understatement to say that developed countries like the US have entirely liberal views on the issue of abortion.

The picture in developing countries is, however, slightly complex. Economic disparities, cultural differences and diversity, and inadequate healthcare facilities for a certain strength of the populace have been a catalyst in depriving women of certain sections, classes, and castes of the right to abort the foetus. Abortion laws in some of the developing countries, although are legal, proper implementation of these laws still remain a challenge. Countries like India and Bangladesh which are religiously rich, also have conservative patriarchal mindsets often acting as barriers and keeping the women under the pressure of exhaustive social stigma. In India, as stated by the Lancet Global Health Report, a total of 156 million abortions took place in 2015, but as per the official data by the Central Government, only 7 lakh cases were reported. Out of the 156 million cases, about 81% were done by medications, 14% by surgical procedures, and around 5% through unsafe methods. The reasons for such great disparities can be expensive costs, social stigma among unmarried women, and lack of medical facilities in rural areas. [22]

Abortion practices in Under Developed countries such as the countries located in the Sub-

20 *Supra* note 19 at 12.

21 "Abortion laws around the world: from bans to easy access" *The Guardian*, *available at* https://www.theguardian.com/world/2016/jan/05/abortion-laws-around-the-world-from-bans-to-easy-access (last visited on May 03, 2023).

22 Susheela Singh, Chander Shekhar *et. al.* "The incidence of abortion and unintended pregnancy in India 2015", *The Lancet Global Health Medical Journal*, p- e111–e120 (2018)

Saharan regions of Africa, like Kenya, Nigeria, and Tanzania have comparatively fewer infrastructural facilities and healthcare, there is a lack of education as well as economic disparities that ultimately put severe restrictions on abortion and lead to unsafe, backstairs procedures which may be dangerous as well as illegal in nature. In South Africa, the Choice on Termination of Pregnancy Act, of 1996 regulates abortion. It has been seen that around 52% to 58% of annual abortions take place illegally and outside the legal framework. An Amnesty International Report reveals that a mere 7% of the total 3,880 public health facilities in the country are authorized to carry out pregnancy terminations. This shows significantly poor access to healthcare facilities for the women living in these countries. [23]

IX. CONCLUSION

The issue of abortion presents complex challenges for both the present and the future generations. Different schools of jurisprudence and their propounders define abortion based on their principles. There can never be one right view on abortion that would be completely able to accept or reject the act. This dilemma on abortion becomes challenging as it affects not only the mother or child but also society, the previous legal precedents and legislations, and those that would be formulated in the future. Natural law school bases its entire argument on the philosophy of the sanctity of human life, which differs from other legal philosophies that act as a tough critic of it. The issue of abortion is widely acknowledged, but consensus remains elusive. As demonstrated by the jurisprudential discussion and analysis above, there are conflicting viewpoints within the natural law school, with both opposition and agreement on permitting abortion. Proponents of natural law schools firmly reject the notion of legalizing abortion due to their belief in basic values such as 'life' and 'religion,' which are fundamentally incompatible with the practice. On the other hand, the sociological and feminist theory of jurisprudence emphasizes society, individual 'autonomy,' and rights and suggests a more favourable view towards permitting abortion.

The sociological school of jurisprudence provides a pragmatic approach to understanding and addressing the social realities surrounding abortion. Roscoe Pound argues that society operates on conflicting interests, and the law should work to bridge the gap between law and society. His concept of 'jural postulate' offers a practical mechanism for resolving social issues through legal means, including law changes to keep up with a changing society. The feminist theory of jurisprudence, under all circumstances, endorses the right of a woman

23 South Africa Government News Agency, "SA's Illegal Abortion Rate Alarmingly High" *available at:* https://www.sanews.gov.za/south-africa/sas-illegal-abortion-rate-alarmingly-high (last visited on Aug. 5, 2023).

to choose for herself and what's best for her, upholding her right to carry or not carry the pregnancy to term. Feminist theorists argue that a woman's autonomy over her body should take precedence over the sanctity of a foetus, and her right to choose must be respected. The debate on abortion is also complex and can depend on various factors, such as the woman's health, the potential disability of the foetus, rape or incest, and societal contributions. While natural law theory assumes a universal moral code that prioritizes the right to life of the unborn child over a woman's autonomy and bodily integrity, sociologists and feminists argue for the importance of considering social and cultural contexts, protecting women's reproductive rights and bodily autonomy and recognizing the impact of social and economic factors on women's reproductive choices. Ultimately, the abortion debate remains highly contentious and requires careful consideration of all parties' interests.

To conclude, natural law theory on abortion receives significant opposition from the sociological and feminist schools of jurisprudence. It can be argued that while Pound's "jural postulate" offers a unique perspective on resolving conflicts in abortion disputes, other scholars may have differing opinions and propose alternative solutions.