

REIMAGINING MATERNAL OBLIGATIONS: EXPLORING LEGAL LIABILITY IN CASES OF MATERNAL NEGLECT AND FOETAL RIGHTS

Sunanda Bharti, University of Delhi, India

INTRODUCTION

Traditional perceptions of motherhood often emphasise ideals of sacrifice, deep maternal instincts, and a perceived transformation of a woman's identity upon becoming a mother. Mothers are often portrayed as embodying qualities of unconditional love and selfless care, expected to navigate various challenges in nurturing their unborn child, adapting their lifestyle to accommodate the demands of pregnancy.

The question that this paper attempts to *briefly touch* is that if the behaviour 'expected' of the mother is not displayed by her despite a conscious decision to become pregnant and to keep the child, and if such a wilful neglect of her own condition results in injury or death of the foetus, what should be her legal liability? Presently, the area of such foetal abuse by the host mother suffers from a complete legislative vacuum but intense medico legal and ethical debates.

In the language of gender and space, the factum of the mother being the adversary vis-a-vis her own foetus/unborn is a space reserved exclusively for third party offenders. As a foetal rights advocate, it is pertinent for the author to emphasise that there is no reason for such presumptions.

The focus of this research paper is to highlight (1) how PW have been kept immune from any legal liability—be it tort or crime against the foetus; (2) how such a lack of prosecution results in adversities to the foetus/foetal rights; and (3) how such prosecutions have now become desirable (Janssen, 1999).

WHY INCULPATING PW NECESSARY NOW

The concept of obligation has undergone a tremendous shift in meaning over the years. Some may even see it as desacralisation of this world but it is a reality that duties that came to us automatically once upon a time as second nature, no longer motivate us. We have become so accustomed to thinking in terms of 'rights' and neglecting our innate duties that there is no option left but for the Legislature to step in and convert them into legal duties, so that their breach either becomes a civil wrong or criminal offence. It is in this spirit that the Legislature of India passed the Parents and Senior Citizens Act 2007 and it is the same spirit that a law should be passed regulating destructive behaviour during pregnancy. It translates into placing reasonable restrictions on the right to bodily integrity and self-determination of the PW, once a decision to keep the pregnancy has been taken.

In cases of PW versus the foetus, it is submitted that the relationship is in a league of its own and hence it is totally unfair to carve out a *complete* analogy between actions brought for pre-natal negligence against third parties and such actions brought against a mother by her child. Perhaps it can be argued that the liability of a PW to her unborn child can be sustained in exceptional cases where the damaging act was in breach of a general duty of care owed by the woman and not where the damaging act was a harmless lifestyle choice. This minimal liability needs to be prescribed through law and it is time that at least an educative/persuasive provision be inserted into the laws defining the pleasant duty of a mother to follow a routine

which is conducive to health of the foetus or prohibit reckless behaviour which may pose a danger to the foetus.¹

What happens if in the exercise of her right to self-determination, the PW refuses to undergo a medical treatment whether invasive or otherwise, that is necessary for the health or life of the unborn? Presently, the legal situation is that although the foetus is protected in several different indirect ways,² an unborn child is not a separate person from its mother. Its need for medical assistance does not prevail over her rights. One wonders whether this is not injustice to the unborn and whether grossly irresponsible conduct having a bearing on the pregnancy should not entail appropriate penalties/punishments (Hui et al., 2017).³

Hence the paper analyses the possibility, feasibility, and desirability of inculcating the PW for torts and crimes committed against the unborn which are in the nature of harm or death. Inevitably, it probes into the question whether mothers' right to free determination of lifestyle has to be subservient to the rights of the foetus, once she voluntarily exercises her right to retain the foetus⁴. Should pregnant women be prosecuted for engaging in self-destructive behaviour that poses a risk of harm to the foetus? Can or should such pregnant women escape liability if their behaviour results in injury/death of the unborn or why should she not be prosecuted, albeit in exceptional cases, for engaging in such behaviour if results in harm to the foetus (like excessive consumption of alcohol, drugs etc)? Why should the child, if it is born with deformities because of the stated behaviour, or dies because of the same, not be allowed to sue the *mother* for its pre-natal injuries or premature death? Such episodes are an offshoot of the maternal foetal conflict theory as well. In the light of the importance that they have acquired, they merit a detailed discussion.

PART-I

Part I of the Paper discusses certain proposed Civil liabilities that can arise.

Civil Law of Torts'—

A Tort is a civil wrong actionable per se. Many of the principles of Tort law have been adopted from the English Common Law by the Indian courts as being consonant to the principles of natural justice. In the following paragraphs, the status of foetal injury and death have been examined from the standpoint of being a tort committed by the PW.

The question of reading the PW and her foetus in an adversarial relationship is fraught with not only legal but medical, social and personal tangles. In addition to this, grave ethical questions arise as and when foetal rights come directly in conflict with that of the expectant mother or if the needs of the foetus and PW diverge. In *Winnipeg Child and Family Services (Northwest Area) v DFG*, McLachlin J of the SC of Canada said that:

[T]o permit an unborn child to sue its pregnant mother-to-be would introduce a radically new conception into the law: the unborn child and its mother as separate juristic persons in a mutually separable and antagonistic relation...for practical purposes, the unborn child and its mother-to-be are bonded in a union separable only by birth...each decision made by the woman in relation to her body will affect the foetus and potentially attract tort liability...the Common Law does not clothe the courts with power to order the detention of a PW for the purpose of preventing her from harming her unborn child⁵

Having stated that, it is equally important to underscore that there is nothing to prevent the State from making such a law or laws. Infact, if some semblance of legal status is to be *really* granted to the foetus, it is but necessary that it be treated with respect right from the very beginning, that is, conception.

It is relevant also to state here that presently law does not recognise pre-birth and post

death stages as having legal personality or status. Resultantly, the unborn is devoid of any legal persona—meaning it does not have any rights (barring certain exceptions) and cannot be held responsible for discharging any legal duties. This understanding of the unborn does not coincide with the moral status of the unborn. As pithily put by Ngaire Naffine, ‘there is a perceived disjuncture between the legal and moral conceptions of the person—one that continues to disturb many legal theorists’.⁶ Hence, morally, the unborn does command a certain treatment by those around it, which is not the case with the legal status of the unborn (Naffine, 2003).

When we study the Law of Tort in regard to the PW-foetus relationship, it essentially covers those cases where the PW herself is the tortfeasor (wrongdoer) and it is her acts of commission or omission that have caused damage to the unborn in the form of death or injury. Generally speaking, PW have been tort immune in this respect. However, the Law of Tort is expanding steadily and thus the Pigeonhole Theory⁷ is untenable. It is under this expansion that claims of Wrongful Death (WD) have been admitted by the USA as a part of the Civil Law of Tort.⁸

The tort cases involving the PW and her foetus as adversaries retain the essentials of a classic tort action viz. existence of a duty of care, breach of that duty, consequent injuries to the foetus and damages. As Smith mentions, (Smith et al., 1986) ‘these tort cases involve recognition of a standard of care that has been violated, recognition of a duty that has been breached, and evidence of injury and of proximate cause related to the alleged action or negligence’.⁹

As per Blank, this development in Tort Law of inculcating the PW for pre-natal injuries/harm to the unborn has been a paced development and is likely to become a permanent part of lawsuits. He maintains that,

[T]he abrogation of intra-family immunity and the willingness of some courts to hold parents liable for pre-natal injury opens the door for increased action in this area. In a short time span, torts against parents for pre-natal injury caused either by commission or omission have been recognised as a legitimate cause of action.¹⁰

Also many jurisdictions like the UK under Congenital Disabilities (Civil Liabilities) Act, 1976 maintain the tortfeasors liability to compensate the foetus for injury suffered (UK Public General Acts, 1976), even if the tortfeasor is the mother carrying that very foetus and guilty of negligently driving a motor vehicle.¹¹

Some maintain it as an unnecessary and unacceptable intrusion into the right to autonomy/liberty of the PW and question whether it is human to censure her for something she did not intend...and so on. In a civil society everyone should be able to assume, and comfortably so, that one would not commit intentional aggression on the other and even if aggression results unintentionally, that the injured would be adequately compensated for the resulting harm. Same should be the case with foetus in the womb and the PW. At the practical level, the suggestion can operate through a representative of the unborn (who would initiate the case). The compensation awarded to the foetus should be deposited in the account of the unborn beneficiary to be used for its well-being at the foetal or later stage.

It is arguable if any ‘rights of bodily integrity’ and ‘liberty’ issue is sufficient to negative the foetuses right to sue in tort through a representative. After-all, a harm has been caused to an entity. Also, the would-be mother, like any other person, already owed a general legal duty of not committing aggression intentionally or otherwise on others. Given this it would be unfair to hold that she cannot be held responsible for her actions towards the foetus that she is carrying. Infact, in such cases, she should bear an additional burden of being extra cautious about the pregnancy (Mattingly, 1993). Though till now such burden is moral in nature in most jurisdictions, it nonetheless cannot be slighted away altogether.¹²

Following sub-heads emerge in regard to the foetus and PW under the Civil Law of Torts—

A) ***Injury to foetus by PW***-woman should be held liable to pay damages if the child was wanted, but the mother was so negligent or reckless with the pregnancy that it resulted in injury to the foetus as a result of which the foetus suffered injury or deformity. As a rule of tort this is possible because of the tenet *injuria sine damnum*, which makes injuries without consequential damages actionable. This penalty should be imposed on the negligent mother irrespective of the gestational age of the foetus for it is potential life in any case. **Here, essentially cases of gross substance abuse should be covered.** Also should be covered the situations where a PW has endangered the life of the unborn by exposure to danger. Here, though the primary intention might not be to assault the foetus, (harm may come to it as a by-product of her conduct) still, negligence cannot be ruled out and gross episodes of this type should invite commensurate penalty.

Presently, there is no law in India that governs the behavioural or lifestyle aspects of pregnant women. It would be difficult to articulate and establish a standard of care for the PW. However, it is definitely not impossible. The degree by which the liberties of the woman are curbed would have to be justified by the benefit that would ultimately accrue towards protecting the foetus. **Behaviours that are already illegal, even in case of non-pregnant women, like ingesting harmful drugs, may simply invite additional or special penalty for pregnant females.** It is regular lifestyle choices and behaviours like consuming alcohol, not eating healthy, aversion to medication of any kind that would have to be sorted.

It must be added here that injury caused by the mother may also fit the bill of hurt, grievous hurt or an act endangering the personal safety of others under the domain of Criminal Law, if foetus is recognised as a person.

(B) ***Death by PW***-where the child was wanted but it *died* because of the negligence of the mother, the PW responsible should be penalised by way of damages; this is referred to as a wrongful death claim, a relatively new area of Civil Law, traditionally inapplicable to the mother.

There are two issues with WD that have a bearing on the present chapter: (1) whether abortion should be included in the same; (2) whether it should inculcate the PW for negligent or wilful deaths that are not legal abortions.

I shall attempt to answer the above by removing the haze that tends to settle on ones thought process while dealing with questions having difficult moral and social ramifications.

1. *Re Abortion versus WD*: while dealing with WD and Abortion in the same vein, it is important to take a balanced approach to ensure that there is no contradiction whatsoever. Abortion would have to be kept available, whether on demand as in the USA or regulated as in India. Care would have to be taken to ensure that abortion is kept separate from WD committed by the pregnant female. The question whether the child was wanted and expected or not, should be the dividing line separating the two.

One must look into the object behind the two concepts-abortion was meant to be a right in the hands of the host-the PW and hence we read it as an 'advantage' in her. Contrary to this, wrongful death was meant to essentially inculcate negligent third parties. It is not to say the pregnant females should be removed from its purview altogether. But that they may be covered in exceptional circumstances for wrongful deaths. **Where death is desired and intended because the mother does not want a child or where death cannot be avoided due to medical reasons by the mother should be covered under abortion and where death of the unborn was never even imagined by the mother but it nonetheless died due to negligent behaviour of the mother (substance abuse etc), may be governed by**

wrongful death statutes.

It is but natural that like any law, this provision would also have a flip side and innocent convictions might result, but all that may be seen as collateral damage—'inevitable' if the higher end of justice to the foetal status is to be achieved. So, as a general rule it would be in the fitness of things to *not* to exclude the mother from WD Statutes-though they should be covered with abundant caution and due investigation of facts.

With this, we come to the next important issue/problem with WD—

2. *Re Pregnant Woman and WD*

In such cases extra care would have to be taken to differentiate accidental deaths from grossly negligent deaths. In fact in repeated cases of substance abuse¹³ that result in death of the foetus, resort must be had to WD claims to set an example. Also, if the State can do as much as to enter a very private domain of depriving the mother a choice of whether she should keep the child or not, for several reasons¹⁴, (1971, THE MEDICAL TERMINATION OF PREGNANCY ACT) the State can very well regulate the pregnancy further, in order to protect potential life and its rights (ARRANGEMENT OF SECTIONS, 1971).

To bring about clarity, the question of whether a duty of care is ever owed by a mother to her unborn child should be decided conclusively and in the affirmative by the Legislature. This would also enable the Courts not to circumvent the tough questions whenever they arise.

However it must be cautioned that while pregnancy may be declared to increase a woman's personal responsibilities, breach of which might be penalised, it should not diminish her entitlement to decide whether or not to keep the pregnancy.

Finally, it may be said that death of the foetus, if wrongful, should include mother also as the tortfeasor. Infact, in proper cases death of the foetus should also be brought within the fold of the homicide statutes (Criminal) and the mother should be punished for murder, causing death by negligence and not only child destruction¹⁵ as it is viewed presently in the UK or as causing miscarriage as in India (Zayets et al., 2015). There is nothing morally or logically questionable in maintaining this stance, nor is there any need to equate it with the abortion right of the mother.¹⁶ This is because there is a huge difference in the two situations- in the former, the child was wanted and expected, perhaps already loved as a part of the family. In the latter, there is no emotional attachment because the host herself does not want to sustain the unwanted pregnancy. The emotional bond is completely absent. While legislating, one should not ignore such emotional and social parameters if the required law is to be grounded in reality and is looking for social acceptance.

PART-II

Part II of the Paper discusses certain proposed Criminal liabilities that can arise.

To begin with, since in Criminal Law, the foetus is not recognised as a legal person for most crimes. Consequently, and generally speaking, the only provisions in which the PW may be indicted for crimes against the unborn are (a) causing miscarriage¹⁷/abortion that is not legal or attempt thereof (1860, Section 312 of The Indian Penal Code); (b) child destruction or attempt thereof, which essentially translates into killing the unborn during the process of childbirth (advanced stages of pregnancy)¹⁸ (1860, Indian Penal Code 1860, s 315: Act).

The concept of causing hurt or injury to the foetus which may attract criminal liability does not exist and hence it is presumed that a foetus is a non-sentient being, incapable of suffering hurt or grievous hurt at the hands of anyone, including the PW (Union of India,

1860). Fovargue and Miola state that medically also, the foetus is a live entity while inside the mothers' womb and a separate one too so there is no reason why criminalization of injuries to the foetus should be limited to homicide¹⁹ or why criminalization of pregnant women who cause [sic] injuries to a foetus should be prohibited. On the other hand, there is every reason to condemn maternal ill-treatment of the unborn child.²⁰

It may be relevant to add that Wrongful Death remains a civil wrong and not a criminal offence. Meaning, homicide of a foetus is still not culpable in the same sense as murder or other forms of culpable homicide of adults (Pickworth, 1998).

In the US, foetal homicide laws such as the Unborn Victims of Violence Act, 2004 are increasingly recognising mother of the unborn as a person who could assault the foetus. South Carolina, and Mississippi are some examples where laws have been used to make PW accountable for the outcome of their pregnancies.²¹ In other words, in the United States, courts are increasingly willing, in principle to intervene to restrain the liberty of PW in the interests of their unborn children (Union of India, 1860). The indigenous foetal homicide statute--the Indian MTPA, 1971 is far from achieving that.

It is to be noted that in cases of foetal homicides/injuries, resulting from the negligent acts of the mother, the life so curtailed or damaged was very much in contemplation of the family. It is hence submitted that the mother should not be given immunity for crimes committed negligently or intentionally against the foetus. Substance abuse (or negligent behaviour in general) if it results in death of the unborn in the pre-viable stage or any stage should not be taken lightly (Rennie et al., 2010).

In India, there has not been an occasion to think regarding the same. Claims are too few and far between to make any dent in the law of precedent or find favour with the Legislature. Particularly in relation to prosecuting the mother for crime against her unborn foetus, the progression for even the USA has not been smooth. After a stiff initial resistance that lasted years, there is only now some evidence of a trend towards supporting criminal sanctions against pregnant women for injuries caused by them to their foetuses (Robertson et al., 1989).²²

CONCLUSION

To conclude, the time of hankering for maternal autonomy and freedom of choice is gone and the task largely achieved²³. Presently, it is time to accord precedence to foetal protection over maternal autonomy (Fovargue et al. 1998). Some may treat it as a blow to self-determination rights of PW and may claim that maternal actions should remain free from pre and post birth sanctions. They may maintain that to recognise foetal abuse is to criminalise pregnancy²⁴ or, if it is coming under the purview of torts, take the law of tort to an absurd limit. No woman after all can provide a perfect womb. However, the author submits that like any other right in the nature of individual entitlements, the right to bodily integrity and self-determination also should be reasonably regulated.

Amongst the adverse effects that may result, following may be cited--one, the very thought or prospect of a criminal prosecution for drug-damaging the unborn foetus may be seen as a burden, a dis-incentive to bear a child in the first place. Habitual women addicts or those who stubbornly refuse to change their lifestyle for pregnancy may opt this over getting their liberties curbed.

Secondly, if at all the woman gets pregnant, the pressures of choosing abortion over retaining the pregnancy may increase to avoid prosecution.²⁵ The author however maintains that this may not happen in the Indian scenario, because abortion in the form of medical

termination of pregnancy is already too circumscribed.

Prosecution of women for such acts may also cause many women to avoid seeking help for addictive behaviour. Moreover, there might arise a tendency to hold women accountable for any behaviour during pregnancy, including smoking, jogging, or not taking pre-natal medicines regularly. It is submitted however that if the judiciary follows a balanced approach or in case of a legislation, if it is plugged of loopholes, such fears may easily be rubbished as exaggerated or unfounded.

END NOTE

¹Ashwani Bansal and Sunanda Bharti, 'Health Interests of Foetus and Expectant mother: Visit Abortion Laws and Surrogacy' (2008) 42 JCPS 1.

²Like a PW is usually not prosecuted during the time of pregnancy.

³*Contra*, Hui, K., Angelotta, C., & Fisher, C.E., 'Criminalising Substance Use in Pregnancy: Misplaced Priorities' (2017) 112 Addiction 1123-1125.

⁴'No woman can call herself free, until she can choose consciously whether she will or will not be a mother': Margaret Sanger. However, her culpability, if any can/may be fixed, once she makes a choice of continuing with the pregnancy and then follows a reckless lifestyle is a case to be considered by the legislatures of individual countries.

⁵*Winnipeg Child and Family Services (Northwest Area) v DFG* 152 DLR (4th) 193, [1997] 3 SCR 925 (Can SC).

⁶Ngair Naffine, 'Who Are Law's Persons? From Cheshire Cats to Responsible Subjects' (May 2003) 66(3) The Modern Law Review 348.

⁷'[The pigeonhole theory] resembles the 10 commandments with their precise specifications for sins. According to this theory, the law of Torts contains a net-set of pigeon holes, each containing a specific tort... If the defendants wrong does not fit any of those pigeon holes, he has committed no tort. Sir John Salmond is the chief supporter of this theory.' SP Singh, *Law of Tort* (5th edn, Universal Law Publishing 2012) 11.

⁸Wrongful Death statutes are civil law provisions that allow the relatives of a deceased person to recover damages from a third party responsible for that person's death. While every US state has such a statute, they differ among themselves in relation to the application of such statutes to unborn children and also as to the state of development of the unborn child that is required for their application, that is whether the foetus should be viable or even pre-viability deaths may be accounted for. Also when the foetus is considered viable may be subjective and case sensitive.

⁹DC Smith, 'Wrongful Birth, Wrongful Life: Emerging Theories of Liability' in JD Butler and DF Walbert (eds), *Abortion, Medicine and the Law* (3rd edn, New York: Facts on File 1986).

¹⁰R Blank, *Reproductive Hazards in the Workplace* (New York: Columbia University Press 1993) 36.

¹¹Congenital Disabilities (Civil Liability) Act 1976 s 2—Liability of woman driving when pregnant: A woman driving a motor vehicle when she knows (or ought reasonably to know) herself to be pregnant is to be regarded as being under the same duty to take care for the safety of her unborn child as the law imposes on her with respect to the safety of other people; and if in consequence of her breach of that duty her child is born with disabilities which would not otherwise have been present, those disabilities are to be regarded as damage resulting from her wrongful act and actionable accordingly at the suit of the child.

¹²See, Mattingly, S.S., 'Mother and Foetus: Changing Notions of Maternal Responsibility' (1993) 12 Politics and the Life Sciences 111-112.

¹³The World Health Organisation (WHO) defines Substance Abuse as: the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.

¹⁴For instance in India, apart from numerous holistic and religious reasons, prevention of sex selective abortions is one of the major concerns why abortion has not been given a free way. Despite protests and demands from pro-choice feminist circles, abortion remains heavily regulated and circumscribed through the Medical Termination of Pregnancy Act 1971. Hence, India is by and large a pro life country more by compulsion of societal and religious dogmas and practices than by choice. In the USA and the UK, though abortion laws are lenient than that of India, there are regulations pertaining the same; it is not a lawless issue.

¹⁵See, Zayets, S., & Zayets, E., 'Problem Aspects of Qualification of Mother's Murder to His Newborn Child' (2021) Uzhhorod National University Herald. Series: Law.

¹⁶On one hand we provide the mother with the right to abort and on the other hand she becomes liable to be punished for negligent behaviour which results in death of the foetus.

¹⁷Causing miscarriage: Indian Penal Code 1860, s 312 states that: Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹⁸Explanation: A woman who causes herself to miscarry, is within the meaning of this section.

Indian Penal Code 1860, s 315: Act done with intent to prevent child being born alive or to cause it to die after birth: Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

¹⁹Infact, most of the crimes against human body should be made punishable in case of a foetus as well.

²⁰See generally Emma Pickworth, 'Substance Abuse in Pregnancy and the Child Born Alive' (1998) 27(4) *Anglo-American Law Review* 472.

²¹Though the author argues that the scope of the choice presently given to women in the pro choice world in the form of almost absolute right of abortion in the first trimester, following *Roe versus Wade* is too wide and not in favour of foetal rights. It needs to be regulated along the lines of the Indian MTPA, 1971. The choice should lie in the choice of not conceiving by using contraceptives and also the choice of using emergency contraceptive pills within 72 hours of intercourse. The so called freedom should have reasonable limits place upon its exercise and alternatively, the so called rights of self-determination should have an expiry date beyond which it should not be allowed to be exercised, except in exceptional situations.

²²J Robertson & L Paltrow, 'Foetal Abuse: should we recognise it as a crime?' (1989) 75 *ABA Journal* 39.

²³Sara Fovargue and José Miola, 'Policing Pregnancy: Implications of the *Attorney-General's Reference* (No. 3 of 1994)' (Autumn 1998) 6 *Medical Law Review* 265.

²⁴For example, in *Rennie T Gibbs v State of Mississippi*, SC Court of Appeals (filed May 19, 2010), the unborn child of 15-year-old Rennie Gibbs (in 2006) died after 36 weeks. An autopsy of the foetus showed traces of a metabolite of cocaine. Her doctors informed the authorities that she had tested positive for drugs while pregnant, and she was arrested on a charge of 'depraved heart murder'—a legal phrase used when it's alleged that a 'callous disregard for human life' has resulted in death. Another recent example is that of Bei Bei Shuai, who was pregnant when she tried to commit suicide by swallowing rat poison in 2010. Though she survived, her baby Angel died days after birth, and Shuai was charged with murder.

²⁵Nova D Janssen, 'Foetal Rights and the Prosecution of Women for using Drugs during Pregnancy' (2002) 48 *Drake Law Review* 741.

According to Janssen, a clear criterion for deciding what is punishable and what is not is supplied by the distinction between legal and illegal drugs. Whatever the lack of moral difference between a PW who harms her child by ingesting legal alcohol and another PW who damages her child by ingesting illegal cocaine, there remains a sharp legal difference. [T]he law simply has never had the capacity to treat all behaviours that produce a particular outcome the same. The mere fact that some bad behaviours are beyond the reach of the legal system, due to constitutional or other facts, does not mean that society should leave unpunished bad behaviours which are within the reach of the legal system. As with any legal issue, a line must be drawn somewhere, and here it can easily be drawn between legal and illegal behaviours.

REFERENCES

ARRANGEMENT OF SECTIONS, (1971). THE MEDICAL TERMINATION OF PREGNANCY ACT.

Fovargue, S., & Miola, J. (1998). Policing pregnancy: implications of the attorney-general's reference (no. 3 of 1994). *Med. L. Rev.*, 6, 265.

Hui, K., Angelotta, C., & Fisher, C. E. (2017). Criminalizing substance use in pregnancy: misplaced priorities. *Addiction (Abingdon, England)*, 112(7), 1123-1125.

Janssen, N. D. (1999). Fetal rights and the prosecution of women for using drugs during pregnancy. *Drake L. Rev.*, 48, 741.

Mattingly, S. S. (1993). *Mother and Fetus: Changing Notions of Maternal Responsibility*-Robert H. Blank, New York: Greenwood Press, 1992, 216 pp. US \$45.00 cloth. ISBN 0-313-27639-0. Greenwood Press, 88 Post Rd. West, Box 5007, Westport, CT 06881, USA. *Politics and the Life Sciences*, 12(1), 111-112.

Naffine, N. (2003). Who are law's persons? From Cheshire cats to responsible subjects. *The Modern Law Review*, 66(3), 346-367.

- Pickworth, E. (1998). Substance Abuse in Pregnancy and the Child Born Alive. *Anglo-Am. L. Rev.*, 27, 472.
- Rennie T. Gibbs v. State of Mississippi,(2010). IN THE SUPREME COURT OF MISSISSIPPI.
- Robertson, J., & Lynn, P. (1989). Fetal Abuse-Should We Recognize It as a Crime. *ABAJ*, 75, 38.
- Smith, D. C., Butler, J. D., & Walbert, D. F. (1986). Wrongful Birth, Wrongful Life: Emerging Theories of Liability. *Abortion, Medicine and the Law*, 178-181.
- UK Public General Acts, (1976). Congenital Disabilities (Civil Liability) Act 1976.
- Union of India, (1860). Indian Penal Code 1860, s 315: Act.
- Union of India, (1860). Section 312 of The Indian Penal Code, 1860: Causing miscarriage.
- Zayets, S., & Zayets, E.,(2015). Problem aspects of qualification of mother's murder to his newborn child.

Received: 12-Jan-2024, Manuscript No. JLERI-24-14552; **Editor assigned:** 13-Jan-2024, Pre QC No. JLERI-24-14552(PQ); **Reviewed:** 27-Jan-2024, QC No. JLERI-24-14552; **Revised:** 01-Feb-2024, Manuscript No. JLERI-24-14552(R); **Published:** 08-Feb-2024