

KANTIAN DEBATE ON ABORTION

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ABSTRACT

With the modernization in the field of technology several complications and legal situations have risen. The legal morality of abortion has been continuously questioned, making it controversial as it involves various sensitive aspect like religion and family. Although several decisions have been passed by the Hon'ble Supreme Court, the public at large seems unconvinced. Law cannot be completely devoid of morality and thus it becomes necessary to ponder upon the morality of any activity sanctioned to be permissible in law. The question still remains unanswered, whether abortion is immoral and whether the right to life of the foetus overrides the autonomy and the freedom of women. This paper aims to bring about the philosophical argument according to the perspective of Immanuel Kant, a cherished philosopher on the current issue of abortion. Additionally, this essay aims to throw light on women autonomy and that they are rational beings and have the capacity to decide regarding their bodies. The paper sums up the conflicting Kantian approach to abortion with an attempt to answer the underlying question of morality.

I. INTRODUCTION

Human understanding and rationality have marked the origin general law which structures the response leading to experiences. Human reasoning contributes to the moral law which frames the basic foundation of freedom, immorality and law.¹ This ideology was synthesized by one of the central figures of modern philosophy, Immanuel Kant. The esteemed philosopher introduces to amalgamate theoretical and the practical aspects of philosophical system by proposing mutual consistency between scientific knowledge, morality, and religious belief as all of these rest on the foundation of autonomy.² He believed that humans are distinctive as they have the capacity to reason which makes humans predominantly superior beings when compared to animalist behaviour.³

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¹ Immanuel Kant, *Grounding for the Metaphysic of Morals*, 1981.

² Thomas E Hill, *Autonomy and Self Respect* (first published in 1991, Cambridge University Press 2000).

³ Lara Denis, 'Animality and Agency: Kantian Approach to Abortion' (2008) 76, *Philosophy and Phenomenological Research*, 117.

Kant propounded two principles of practical reason:

- a. Act in such a way that the maxim of your action can be made the maxim of the universal law (general action).⁴ This is the concept of categorical imperative.
- b. An action is right only if it can co-exist with each and every man's free will according to universal law. This constitutes the principle of right.⁵

The capacity to use reason which is shared by all men as rational beings and enables men to step outside the confines of their local or communally based patterns of socialized beliefs.⁶ Such a reason derived must be subject of rational analysis.⁷ There was no point in relying upon moral intuitions as if an appeal to intuition answered the appeal of our opponents to feeling.⁸

The applicability of this theory which were propounded in the eighteenth century to the contemporary issues in the twenty first century is a mere probability given the change in the beliefs, attitude and the ability to reason of the society at large. Upon analysis one comes across an intriguing conflict between autonomy, moral and the categorical imperatives. Independent of each other, autonomy and categorical imperatives seem to be a mere synonym for consciousness.

This dispute is explicit in the case of abortion one of the most debated issue today. It has been viewed as the rare exception and an immoral act which is either generated by the irrational religious doctrine or a confused metaphysical argument. The Kantian perspective of this concern throws light on the right to life of the foetus and the right to take autonomous decision considering the aspect of morality.

II. KANTIAN MORALITY OF ABORTION

A. Kantian Duties Towards Oneself

Humans as rational beings have certain duties towards oneself. These duties may be perfect duties or imperfect duties. Perfect duties are those duties wherein prohibition of acting on a maxim would be a disrespect or a harm to oneself. While imperfect duties to oneself consists of acting on

⁴ Immanuel Kant, *Philosophy of law* (T&T Clark 1887) 34.

⁵ *ibid* 45.

⁶ Wayne Morrison, *Jurisprudence: from the Greeks to post modernism* (first published in 1997, Cavendish Publishing Limited 2005).

⁷ Immanuel Kant, *The Metaphysical Principles of Virtue* (Bobbs-Merill 1964).

⁸ Immanuel Kant, *Religion within the Limits of Reason Alone* (Harper & Row 1960).

maxims that promotes the ends whose adoption constitutes a commitment to realize one's rational nature.⁹

According to Kant, duties of virtues are grounded in the account that one must not treat the capacity to set, organize, and pursue ends as something appropriately sacrificed for arbitrary, inclination-based ends rather than one must recognize rational nature, particularly the moral capacity, as the source of human dignity and further that all rational beings are equally entitled to this fundamental, basic respect.¹⁰ Kant has enumerated respect for rational beings to be a guiding source to virtuous agents both by limiting what they do in the pursuit of their goals and by motivating them to promote their own perfection and others' happiness.¹¹

Thus, Kant not only propagates respecting others but also oneself. While undertaking a step like abortion, a woman must not pursue such an action without providing adequate reasoning, rather act virtuously in a manner that she respects herself and not be guided by any other inclinations.

Safeguarding the moral health of the individual concerns the perfect duties to oneself which includes not only one's ability to determine one's will through reason alone, but also one's natural powers.¹² Additionally, perfect duties to oneself require asserting one's dignity, including one's equality with others. Imperfect duties to oneself concern "moral prosperity"; they require promoting one's natural and moral perfection.¹³

In the famous case of *Doe v. Bolton*¹⁴ the Court stated that "*all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the well-being of the patient.*"¹⁵ Thus laying emphasis on not only physical but also moral and mental health of a woman. This case closely complies with the Kantian perspective of duties towards oneself. If the woman on her own capacity infers that abortion is rational and would improve not only health, but also safeguards her dignity, then the woman must undertake such an action without any hesitation.

Duties to oneself as a moral being only prohibits acting on maxims contrary to one's inner freedom and dignity. Through maxims of avarice and servility, for example, agents subordinate

⁹ Immanuel Kant, *Metaphysics of Morals* (Mary J. Gregor tr, Cambridge University Press, 1991).

¹⁰ cf Denis (n-3).

¹¹ cf Denis (n-3) 119.

¹² M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence*, (7th edn, Sweet & Maxwell 2001).

¹³ cf Kant (n-9) 6:419.

¹⁴ 410 U.S. 179 (1973).

¹⁵ *ibid.*

themselves to material goods or other people, implying that those things or people are more valuable than they are.¹⁶

Duties to oneself as an animal and moral being prohibits agents from acting on maxims of using their bodies in ways that suggest that the beings so embodied lack dignity, or on maxims that display a willingness to undermine their bodies' ability to play their reason-supporting role - for example, maxims that place the satisfaction of physical urges above the preservation of rational efficacy.¹⁷ This implies that a woman undergoing abortion must take the decision independently without hampering her dignity and respect towards herself.

Thus, Kant upholds autonomy of a woman or any human being in consideration through perfect duties which are conferred upon oneself to behave or undertake an act in such a way that the act is not juxtaposed to the rationality that one withholds. Kant thereby establishes that humans regardless of any gender have the obligation to act upon the maxim that does not violate or bring down human integrity and rationality.

B. Kantian Dignity and Honour

Kant's accounts of duties to oneself as an animal and moral being often refer to nature's ends for particular drives, feelings, and organs constitutive of our animal nature.¹⁸ “Respect for ourselves as human rational beings usually requires preserving the fitness of our capacities for promoting their natural ends. In Kantian perspective, a rational being values herself and treats her body with due respect and honour. Such an agent sees her body as an extension and a condition of her agency; she appreciates her animal nature for its reason-supporting role”.¹⁹

A woman who is a virtuous rational being thus views her body, life, and health as irreplaceable. The virtuous Kantian agent is not influenced by her animal nature as authoritative in determining her will rather she is governed through reason. But insofar as she recognizes her animal drives as good, she endeavours to preserve the fitness of her drives for achieving nature's ends for them.²⁰

¹⁶ cf Kant (n-1) 6:420.

¹⁷ cf Denis (n-3) 120.

¹⁸ Lara Denis, ‘Kant on the Wrongness of 'Unnatural' Sex’, (1999) 16 History of Philosophy Quarterly 225-48.

¹⁹ cf Denis (n-3) 122.

²⁰ cf Denis, (n-3) 123.

Broadly, animal nature is inherent in all human being. A Kantian virtuous woman governs this animal like nature through reasoning and such a reason is also the guide to take measure that is necessary or required for securing one's own health and happiness. Furthermore, trying to conform with the other external factors without subjecting such an act to one's own reasoning according to Kantian view is a disregard to the rationality that one possesses and exploitation of the individual as means to the end which is contrary to the second categorical imperative.

From the above it can be inferred that while considering various aspects of abortion, women being a rational creature must by pass her animal behaviour and substantiate very act in a rational and reasonable manner. The rational decision must uphold her honour and dignity and not treat her body as a mere means to and end rather as an end itself.

C. Kantian View on Women Autonomy

Kant emphasizes that any action undertaken must be guided by pure practical reason and must be performed for the duty's sake rather than being influenced by any other social, biological factor.²¹ Woman should not be compelled to subordinate her interests to those of the foetus. Women have the capacity to reason autonomously without any external factor acting upon them. Autonomy is one of the major premises of Immanuel Kant's ideology.²² Moral law similar to the general laws of nature are given by humans to themselves. When the woman gives herself the law and duty to undertake any course of action, it becomes morally justified as it is backed by reason.

Further it becomes a part of the perfect duty that the woman undertakes an action that is rationally guided.²³ An act that is induced to be undertaken or prohibited from carrying on such an action without autonomy or by disregarding and restricting rationality is unjustifiable and not moral.²⁴ According to the Kant an individual act is moral and justified only if such an action has a driving force of rationalism.

²¹ Rachel Bayefsky, 'Dignity, Honour and Human Rights: Kant's Perspective' (2013) 41 Political Theory 809-839.

²² Onora O'Neill, *Constructions of Reason: Explorations in Kant's Practical Philosophy* (first published in 1989, New York: Cambridge University Press 1995).

²³ Marilyn Friedman, 'Autonomy, Social Disruption, and Women' In: MacKenzie and Stoljar (Oxford University press 2000), 35-51.

²⁴ Bognetti, *The Concept of Human Dignity in European and U.S. Constitutionalism*, in G. Nolte (ed.), *European and US Constitutionalism, Science and Technique of Democracy* No. 37 (2005), 89-90.

Judicial approach in the case of *Roe v. Wade*²⁵, primacy was given to woman's privacy and individual autonomy and liberty. Further the Court held that the life of the foetus is a potential life and not a person. Considering this aspect with regard to rational character of human beings, woman have the right to exercise any action if is guided by pure practical reason and such an action would be in furtherance of individual autonomy.

Hence a woman who decides to abort a child must undertake such an action without the influence of any other external factor but must be guided by the rationality that she poses for safeguarding the agency that she is responsible for. Any hindrance or influence of external factor would only make it an act that disregards the respect that a human deserves. From this perspective abortion is an autonomous act undertaken by a rational being devoid of any external influence.

III. KANTIAN MORALITY AGAINST ABORTION – KANTIAN UNIVERSALISATION MAXIM

In so far as Man is a part of the world of reality, he is subject to its law and is not free but his reason and consciousness make him a free agent. Thus, a man participates in Two worlds that is sensible and intelligible. Law and Morality belong to the latter²⁶. Man, in his actions is a free agent are governed by aims and the ethical basis of action has also to be accepted a priori. Justice according to Kant originates from pure practical reason. People know a priori how to act justly. The ultimate aim of the individual should be free will but when free reason is exercised then such a free will must not be contaminated by emotions.²⁷

Kant emphasized on that moral worth of an action undertaken consists not in the significant consequences that flow from it. In other words, for any action to be morally good “it is not good enough that it should conform to moral law – it must also be done for the sake of moral law”²⁸. For the supremacy of morality three major concepts must be taken into consideration duty that derives its basis from morality, autonomy (freedom) and categorical imperative (reason).

According to Kant reason is “pure practical reason which legislates a priori, regardless of all empirical ends”²⁹. In order to carry out an action the same must be subject to two conditions

²⁵ 410 U.S. 113 (1973).

²⁶ R W M Dias, *Jurisprudence* (5th edn, Lexis Nexis 1985).

²⁷ Roger Sullivan, *Immanuel Kant's Moral theory*, Cambridge University Press, 1981.

²⁸ Immanuel Kant, *Grounding for The Metaphysics of Morals* (Ellington, James W tr., 3rdedn, 1993).

²⁹ Immanuel Kant, “*On the Common Saying: This May Be True in Theory, But It Does Not Apply in Practice*”, in Reiss Hans (eds) *Kant's Political Writings*, [1793].

of categorical imperatives. First being that the maxim which is rule or principle must be universalized. Kant in his work clearly points out “act only on the maxim whereby you can at the same time will that it should become universal law of nature”³⁰.

The formula of Universal law is the formulation of the categorical imperative which captures the notion of morality as a categorical imperative, that is, as a universal law that commands us to act on certain principles independent of our inclination-based ends or our personal character.³¹ Thus, while undertaking an autonomous action, it must be wholly applicable to the universe.

Man transcends his empirical nature and is capable of a course of action governed by practical reason.³² Act as if the maxim of your action were to become through your will a universal law of nature.³³ Thus Kant argues that the only acceptable moral rules are those which everyone could adopt. Morality imposes upon us principles and conditions of the actions, once understood are rationally entitled to the assent of any possible community.

Inferring from the above, it is clear that decision to abort the child, which is morally valid must be applied universally. In furtherance of the same, if every woman in exercise of her autonomy undertakes abortion as morally valid, the consequences may be devastating. Although foetus is not treated as person, yet signifies a potential life that is also a potential rational creature in the eyes of Kant. Thus applied universally, it is a threat to the very existence of the rational beings.

Thus, R.M. Hare uses the 'Kantian' notion of universal prescriptively to argue that 'abortion is prima facie and in general wrong' and 'that a principle forbidding it in general is the one we should adopt' for use at the intuitive level of moral thinking.³⁴

The situation seems grave with the application of the first categorical imperative of universalization of the maxim. This ponders upon the thought of oneself being aborted under the guise of autonomy. If one is consistent and thinks that abortion is normally permissible, in such a case one will be consenting to the idea of themselves having been aborted in normal

³⁰ Kant (n-22) 73.

³¹ Lara Denis, 'Abortion and Kant's Formula of Universal Law' (2007) 37 Canadian Journal of Philosophy 547.

³² Edgar Bodenheimer, *Jurisprudence, the Philosophy and the Method of the Law*, 2009.

³³ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 1981.

³⁴ R.M. Hare, (1989) '*A Kantian Approach to Abortion*' and '*Abortion: A Reply to Brandt/ Social Theory and Practice*' 29.

circumstances.³⁵ However human mind completely shuns the idea of themselves being aborted under normal circumstances and thus the universalization of the maxim fails as any reason or situation that is being justified must adhere to the universal law.

If the procedure of abortion is universalized, then there would be a threat to the existence of humanity as all women although guided by an uninfluenced reason may adopt the method of abortion not only fail the duty conferred upon them by nature but also would fail in the duty to act accordance to the morale that has been vested upon her by the virtue of being a human being.

Many jurisdictions including India, treat unborn child as a person. This is clear as causing miscarriage *per se* is considered as an offence related to a person. A Potential Life is also considered to have equal rights (For example: in cases wherein the child in the womb inherits property). Right to life is guaranteed to every person which brings under the purview an unborn child as well. Thus, the rights of potential life cannot be completely neglected.

Additionally, Kant condemned instrumentalization of a human being to a mere existence of an object. He emphasized that every human being has the capacity to reason and inherently is morale in nature.³⁶ Hence, every human must be treated as an end in a dignified manner. In other words, human beings are ends in themselves and not a mere means to the desired end. This principle of human dignity forbids the use removal of an embryo as it is at a prenatal stage of developing into a complete human being with the capacity to reason.

From the time of conception, the foetus is regarded as a life in existence. Applying the theory of human dignity to this situation the principle clearly violates the second condition of categorical imperative - treating humans as an end in themselves. The process of abortion portrays human life to be a mere object that can be eliminated at the discretion of a person treating the very existence of human life as a means to an irrational end.

Nevertheless, certain extreme conditions always come as an exception to every theory. As Kant emphasized on the importance of treating humans as an end rather than means to the end, situation wherein the life of the mother is in danger stands as deviation. If the foetus is not aborted in order to save the mother's life, would be a contravention to the human dignity of the mother who is the carrier of the child.³⁷ Apart from that it seems illogical and irrational to give more

³⁵ Harry G. Gensler, 'A Kantian Argument Against Abortion' (1986) 49 *Philosophical Studies* 83.

³⁶ cf Bodenheimer, (n-32).

³⁷ *Harris v. McRae* 448 U.S. 297 (1980).

importance to a foetus that has not yet been born than to a woman who is a living entity in the society.

IV. CRITICAL APPLICATION OF KANTIAN PHILOSOPHY

Careful consideration of Kantian idea of human dignity unfolds that an individual human being must be respected because the individual has the capacity to rationalize every action that is undertaken. A foetus does not have the capacity to reason, reflect or to act morally. foetus is a potential human being thus making it a potential rational being and not an existing rational being. Thereby the argument that the foetus is a human being who will be capable of making rational decisions fails as the same is a matter of concern in the future and to predict such future events and undermining the dignity of the women who is a rational existing human currently is a complete irrational argument.

To contradict the previous argument on recognizing the animal nature according to Kant it is rationality that distinguishes humans from animal nature. It is indeed true humans have predominately animal behaviour and nature. Giving birth, precisely pregnancy is considered nature of animals as it is associated to animal like pleasure. Thus, it becomes important to draw a line between animal nature and human rational. Such animality interferes with perfect duties to oneself which Kant defined “prohibit maxims of actions that express disrespect for one’s own rational nature”³⁸. These perfect duties are concerned with “one’s moral health and agency and the assertion of one’s dignity and equality to others”³⁹. Inability to fulfil duty towards oneself and reducing one’s human body to a means of pleasure is objected by Kant. In this regard abortion would not be immoral according to Kantian agents.

According to Kant, human agents have duties to themselves and to others that require them to guard and further feelings of kindness, love and sympathy for others generally, as well as feelings of protectiveness of and concern for their children in particular.

Considering the first approach, women as rational beings have all the right to undertake any autonomous activity that is guided solely by rationality. In this approach the unborn child may be aborted by the will of the women without taking into the consideration the life that is a part of the woman’s body for which she is the agent which many associates it to be disregarding a part of her own being.

³⁸ cf Denis (n-3)117.

³⁹ cf Denis (n-3) 119.

Another important flaw in this approach is that assumes that human foetus is not a rational being and has no life or rights and there by an end in itself. An obvious source of moral significance for a foetus is its being loved or wanted by the pregnant woman or her family.⁴⁰ Killing her developing foetus goes against a woman's morally significant tendencies toward love and sympathy generally, and toward attachment to her foetus in particular.⁴¹ Abortion thus would be a means only when there is an abnormal circumstance. Hence such an approach does not hold applicable in reality. The soundness of this approach stands questioned.

Considering the second approach, the universalizability principle and not consenting to your own abortion entail that abortion is not normally permissible. The universalizability principle and consenting to everyone else's abortion entail that abortion is normally permissible. There seems no analogous reason here why you should revise your attitude to your own abortion.⁴² There are no such obviously unacceptable consequences of a general prohibition of abortion. Giving no value to the autonomy of the women and rationality of such a human being again opposes the major Kantian philosophy of autonomous, rational and supreme being that man is. Treating a living person's rights to be inferior to that of the unborn is not supported by Kant. Thus, there exists neither soundness nor applicability of the approach.

V. CONCLUSION

Philosophy is subjective in nature and any aspect that has been theoretically explained by philosophy has not just given insights into already existing belief rather has contributed in developing a different perceptive. Similarly, a careful analysis of Kantian theory of morality raises two questions. First, the conflict between autonomy and categorical imperatives and second, the applicability in the current scenario.

Abortion being a very sensitive topic not only religiously but also morally has once again proven to have brought out a two-sided opinion even in Kantian perspective. Many Kantian agents would agree that abortion is immoral as it deprives life to a rational being and is morally wrong. However, a considerable would hold a view that autonomy of the woman to take decision of her part of the body surpasses the right to life of an unborn child.

⁴⁰ cf Denis (n-3) 126.

⁴¹ cf Denis (n-3) 129.

⁴² Bryan Wilson, 'On a Kantian Argument against Abortion' (1998) *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 119.

The grounds that abortion would be immoral is that it would be irrational to exercise autonomy and will of every pregnant woman have an abortion. The act of every pregnant woman aborting the foetus would ultimately end human existence if the same is universalized. There needs to a balance that needs to be struck between the animal nature and the pure practical reason which imparts autonomy. A pregnant woman must not be objectified and seen as a mere carrier of a potential rational being but as a moral agent and a rational being in herself. The right to autonomous and rational decision first lies with the existing and living person and to the unborn child.

The Kantian theory neither detests the practice of abortion nor supports it. The Kantian theory only supports the autonomous action that governs every human being while taking decisions which are subjected to the test of categorical imperatives. Abortion being subjected to strict application Kantian views would be called immoral however dwelling deep into the perspective laid down by Kant, the autonomy of rational being here of a woman has been upheld. Thus, morality of abortion like many other serious moral problems that exist in our society has remained a consistent unanswerable question for which finding a concrete solution is not easy.

However, Kantian ideals bear no actual relation with the system of law. It is purely ideal to serve as a standard of comparison not as criterion of validity of the law.⁴³ Abortion must be regulated by providing certain liberty to women to exercise their autonomy subject to restrictions. Hence a law striking a balance between morality and autonomy is required in the present situation.

⁴³ cf Dias (n-26).