

MY WOMB, MY CHOICE

Abstract

Abortion is a very delicate issue which although has been recognized by Indian legislation, nevertheless as a concept still requires understanding and awareness. In 2015, 15.6 million abortions were carried out in India. If the value is anticipated to the present, it is projected to be considerably greater in 2023. Abortion is performed in one out of every three pregnancies, clearly indicating that there is a substantial demand for abortion allied services. Hence, its regulation becomes inevitable. The Indian viewpoint on abortion has been primarily pro-choice, and while our constitution and many of our laws were decades ahead of the rest of society, our attitude toward abortion has not kept pace with time because of which significant number of abortions done are medically unsafe in nature. Approximately three-fourths of all abortions are performed outside of the health care settings, because it is bound by social taboos. Breaking taboos requires grassroots level activism, educational growth, and extensive amount of discussion. While these variables would try to raise awareness and combat rigid archaic anti-choice views, excellent explanations may bring about change. This paper's first and second part define abortion as a concept and as a personal choice. The third and fourth part further elaborates in detail about India's abortion laws and the obstacles they continue to encounter. At last, the final section discusses about the rights of unmarried women, followed by a conclusion.

Keywords: Abortion, Indian legislation, pregnancies, anti-choice.

I. INTRODUCTION

Walker (Oxford Companion to Law) defines abortion as "the expulsion of a fetus from the womb before it has reached a state of development sufficient for it to survive independently," which occurs between the 21st and 28th week of pregnancy. It might be unintentional, natural (known as miscarriage), or planned. Reproductive rights are a vital part of one's individual freedom, and they have been strengthened to include access to methods of contraception, the right to a legitimate and secure abortion, the right to make choices about reproduction free from discrimination, force, and violence, the right not to be exposed to detrimental behaviors such as forced childbearing, and the LGBTQ community persons' equal entitlement to the similar reproductive and sexual health rights as all other groups. Indian Constitution guarantees the 'Right to live with dignity' under Article 21, and the 'Right to abortion' can be clearly inferred from there. Even the 1948 Universal Declaration of Human Rights recognized reproductive rights as a fundamental human right. As per Para 7.3 of International Conference on Population and Development (ICPD) 1994 "Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children".

Abortion raises legal, moral, and ethical concerns. The conflict exists between pro-life advocates, who regard death of an unborn child to be a societal death, and pro-choice advocates, who believe that women should have absolute control over her existence and that no one, not even the state should have the power to direct or control them.

India legalized abortion in 1971, prior to which the abortion was criminalized under the Indian Penal Code 1860, which defined abortion as 'intentional miscarriage'. However, a considerable proportion of abortion done are medically risky because of societal, economic, and logistical constraints that prevent women from accessing appropriate treatment. It wasn't until the Medical Termination of Pregnancy Act of 1971 was enacted did it become obligatory for hospitals to get proper equipment for carrying out abortion process, in order to obtain government license. Prior to the enactment of the MTP Act, abortion was carried out solely to preserve the life of a woman. It is now permissible not just to spare a woman's life, but also to shield her from bodily and emotional suffering. With time, many changes in the existing legislation were demanded by the activists, groups, individuals and NGOs owing to which, the MTP Amendment Act of 2021 was brought into force which offers fresh rules with regard to secrecy of the process, safeguards bodily autonomy of women, and provides for risk-free abortions.

On August 24, 2017, a nine-judge panel of India's Supreme Court in the landmark judgement of *K.S. Puttaswamy v. Union of India*, strongly upheld privacy as a fundamental right, which is granted to every citizen. While judges conveyed their viewpoints on privacy differently, still the bench tended to agree on the point that the privacy encompasses personal liberty pertaining to the body, intellect, decisions-making, and also informational privacy. The bench explicitly highlighted that the woman's decision with regard to reproduction and abortion falls within the parameters of her constitutional right to privacy, and an individual has a liberty to make a rational choice even if it involves sterilization.

- 1. Abortion Good or Bad- Her Choice:** “There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned”.

-Betty Friedan

Women is an indispensable part to the idea of family, in other words, she is the creator of the family and thus rightfully deserves the right to plan family. Procreation and abortion should be entirely at the choice of women, because it is her social, physical, and mental existence that gets altered the most. The good and bad with regard to abortion, is directly proportional to the good and bad with regard to the physical and mental health of a woman undergoing it. If a woman's pregnancy is continued against her choice, it poses even a greater danger to the health of both mother and a child, than the abortion itself. The Indian Constitution explicitly enshrines the right to life and liberty as a fundamental right, which also tends to include “The Right to dignity of living with grace”. This right serves as a lifeline for women in their battle against all adversities, which involves gender discrimination. The right to abortion should be exclusively available to the women, except for instances when the circumstances are unusual or severe and the termination of pregnancy is necessary to preserve the life of a mother. In her article "Bearing Children: The Right To Decide," Rebecca Bresnick states that “protection of our bodies is a basic human right, not a privilege and control over our reproduction process is the most crucial component of this right”.

Women's participation in decision-making in patriarchal culture is minimal, as they are bound by societal standards and do not have the autonomy to express their ideas. To break this link, the state has implemented numerous pieces of legislation aimed at safeguarding equal rights, eradicating social discrimination, and providing women with support services. Although the MTP Act of 1971 is a half-century old legislation, it is among the most liberal in the world; it is society's cold behavior that prevents it from serving its intended objective of providing women with a free choice about contraception, sterilization, and abortion. When seen in the context of the more extensive effort to curb population growth, it is clear that enacting the MTP Act in the first place had barely anything to do with women's reproductive autonomy to make choices. Lastly, “Right to Choice” with regard to abortion also means, choosing to have a family in right circumstances.

II. ABORTION LAWS IN INDIA

Unintended pregnancy is a significant issue in the society we live in and it can have serious implications on women, owing to which on August 25, 1964, the Central Family Planning Board of India proposed to the Ministry of Health that an inquiry committee be formed to investigate the need for abortion legislation in India. As a result, the committee known as the Shantilal Shah Committee was set up which after analyzing extensive amount of statistical information accessible at that time offered its recommendations. Based on the research results, the government enacted the Medical Termination of Pregnancy Act of 1971 (MTP Act of 1971), which codified and advanced India's abortion laws.

- 1. Dissecting Medical Termination of Pregnancy Act, 1971:** The Act has been split into eight sections that handle concerns such as the time, place, and conditions under which an abortion up to 20 weeks of gestation can be done by a recognized, certified, and properly qualified medical practitioner. It makes abortion permissible in circumstances where - the contraceptive fails; the pregnancy may cause harm to the pregnant woman's emotional or physical well-being; there is a possibility that an unborn child may have major physical or mental defects or will be disabled; and when a pregnancy emerges without the woman's consent such as by means of rape or sexual abuse. The pregnant woman's consent must be obtained unless she is a minor or insane, where her guardian's approval becomes necessary.

However, the aforesaid legislation acquired several problems with time like- the statute does not offer women sole control over their own bodies as it outlaws abortion outside twenty weeks of gestation; for a pregnancy of twelve to twenty weeks, women needs the approval of one and two medical professionals, accordingly, to terminate the pregnancy, and in India there is a shortage of gynaecologists leading women to have unsafe abortions; in light of the social taboo linked to abortion the 20-week restriction should be revoked since it might take awhile for some women to figure things out and terminate their pregnancy. Given recent innovations in science, it has become possible to even terminate a pregnancy at a later stage; and the Act does not provide unmarried women the right to terminate their pregnancy if their contraception fails.

- 2. Amended Medical Termination of Pregnancy Act, 2021:** Due to emerging flaws in the MTP Act, 1971, the Lok Sabha proposed the MTP (Amendment) Bill, 2020 on March 2, 2020, which got Parliamentary approval on March 17, 2020, and finally received the President of India's assent on March 25, 2021, and became an extensive law regulating the legality of abortion in India. The MTP (Amendment) Act, 2021 has the following key provisions: -

- **Rise in the maximum gestation period for pregnancy termination:** The MTP (Amendment) Act 2021, attempts to raise the gestation period limit for the woman bearing a child, i.e., if the woman intends to end her pregnancy up to the the gestation period limit of twenty weeks, she has to get the opinion of one registered medical practitioner; if the gestation limit exceeds twenty weeks, she must have the opinion of two registered medical practitioners. The most significant gestation restriction is additionally lifted from twenty to twenty-four weeks for certain categories of women, such as victims of incest or rape, minors, and handicapped women.
- **Composition of Medical Board:** The new Act creates the Medical Board, whose objective is to specifically handle circumstances when serious anomalies in the fetus are found. The Medical Board advises that these kinds of pregnancies may be terminated outside of twenty-four weeks of gestation if the probability of the baby being delivered with mental or bodily impairment remains considerable.
- **Removing the term “Married Lady and Her Husband”:** The amended Act enables women who are not unmarried or are in a live-in relationship a right to terminate their pregnancies. The expressions "married lady and her spouse" is now updated with "women and her partner." Such changes may contribute to lower the number of difficulties that unmarried pregnant women commonly confront, such as feelings of

guilt, shame, and a sense of inferiority, that have contributed to the lion's share of such women choosing methods of self-harm ranging up to suicide.

- **Preserving Pregnant Woman's Fundamental Right to Privacy:** The legislature has made genuine attempts in the revised act to uphold the privacy of the female who terminates the pregnancy, as only those who are empowered by legislation can receive confidential information about the pregnant woman who is exercising her right to abortion. A registered medical practitioner who breaches the aforementioned rule can face up to a year in jail, a penalty fee, or both.
- **Instances of Contraceptive Failure:** The new Act also permits married and unmarried women to terminate their pregnancies up to the twenty-week gestation period, if they conceive as a consequence of a contraception failure.

III. UNMARRIED WOMEN'S RIGHT TO ABORTION

India continues to possess its conservative nature when it comes to gender roles. Despite the fact that India does not prohibit premarital sex, it classifies premarital relations or pregnancy without marriage as a societal taboo due to its rigid cultural, social, and religious structure. Pregnancy among unmarried women still continues to be seen as a social disgrace. There are several challenges in India that prohibit an unmarried woman from seeking an abortion- the first being their inability to detect the pregnancy rapidly. The reason for this is general lack of knowledge about reproductive wellness. Another major challenge is the lack of support from the partner and parents which prevent unmarried women to undergo lawful abortion.

However, as a result of financial autonomy, social mobility, and better living conditions, gender roles are becoming less rigid and premarital relations are becoming more prevalent which has subsequently lead to an upsurge in the percentage of pregnancies among unmarried women. Based on a research done in 2015, "15% of men and 4% of females acknowledged that they had premarital sex or sex outside marriage". The rise in number of abortion cases amongst unmarried women stressed the dire need for amendments to the MTP ACT, 1971, and the MTP Act of 2021 takes into account the right of unmarried women to undergo a lawful abortion without the consent of partner or lawful guardian.

IV. IMPEDIMENTS TO ABORTION

1. **Social Stigma:** Abortion is an act that is nearly as old as society. Women have been regularly terminating their pregnancy for hundreds of years, and it is right now one of the most prominent and safe treatments. However, abortion still continues to be considered as unethical and unjust in Indian society. Moreover, the abortion seekers and providers, as well as the individuals associated in abortion treatment, often confront negative mindsets and actions towards them. As a result of this social stigma, abortion care is socially, medically, and legally stigmatized worldwide, presenting an impediment to getting quality and secure abortion treatment. This impediment has led to the growing need for the pharmaceutical abortions, which are also known as 'abortion pills'. Misoprostol tablet sales in India have increased by 646% in the past five years. Additionally, 81% of abortions were carried out using medicine purchased from hospitals, pharmacies, or other sources. Medication abortion provides a secretive and speedy means of terminating pregnancies, away from judgmental physicians and curious neighbors.

- 2. Shortage of Medical Professionals:** In pursuant to the provisions of the MTP Act of 2021, a legal abortion ought to be carried out only under the supervision and involvement of a medical professional specialized in gynaecology or obstetrics. According to the research study carried out in Assam and Madhya Pradesh by the Chief Executive Officer of IPAS Development Foundation “reportedly there are approximately 30,000-40,000 OB-GYNs in India, whereas we have approximately a total of 700,000 MBBS doctors, an a mere 100,00 are qualified to provide abortion treatment”. Due to inadequate number of women's health professionals in the country, many women often resort to unsafe and unlawful abortion termination processes. According to a 2018 Lancet study, over 78% of the 15.6 million abortions performed in 2018 were done outside the health care settings because of this scarcity.
- 3. Inadequate Geographical Reach:** Another impediment to abortion that many women face is their lack of regional connectivity to healthcare institutions. According to the Indian Health Ministry's 2019-20 Rural Health Statistics Report “around 66% of the country's population resides in rural areas, and there is a 70% deficit of obstetrician-gynecologists in rural parts of India”. As a result of which, many abortions are frequently done by unskilled pseudo professionals and are obviously potentially dangerous. Merely 20% of abortions were done in public medical centers, as per the 2015-16 National Family Health Survey (NFHS) and 52% abortions were carried out in private medical centers and hospitals located in urban India.
- 4. Frequent Demand of Spousal Consent:** As per the MTP Act of 2021, if a woman who is "major" and of "sound mind" chooses to undergo an abortion, she is not required to obtain the approval of her partner, spouse, or family. Despite the law being in force, women continue to encounter a number of impediments, such as, the healthcare providers consistently demand from a women to acquire approval either from her partner or parents owing to which the privacy and security of a woman and confidentiality of procedure is breached. These stereotypes trace their roots from the patriarchy.
- 5. Low rate of Certification of Abortion Facilities:** The amount of work and time needed to get abortion clinic license, as well as mismanagement, bureaucratic delays, and ask for bribery clearly demonstrates the state's approach and policy on abortion. In the year 1999, a nationwide survey of 118 abortion clinics revealed licensing delays ranging from 1 to 7 years. Due to the lengthy process, health care providers do not even bother to apply reflecting either indifference or a careless approach regarding licensing. Moreover, low awareness and misconceptions about the law (such as the belief that doctors are not obligated to obtain license if they function in local clinics, only to terminate pregnancy occasionally , or to terminate pregnancy of a married women) are other factors that lead to low rate of certifications.

V. CONCLUSION

Maternity is a delightful stage in every female's life that is accompanied with a plethora of obligations and responsibilities to which each mother devotes her best possible effort in order to ensure her child's proper growth and development. Further, there could be situations like accident, ignorance, or negligence, in which the choice to terminate the pregnancy should vest with the woman because she is the one who can even lose her life during the procedure. For a number of years, women's right and freedoms over their own

bodies have been the matter of controversy. Despite the addition of new provisions within the Medical Termination of Pregnancy (Amendment) Act of 2021, there persist plenty of social as well as practical impediments. Furthermore, even within the framework of marital relationships, women encounter physical and sexual abuse from their spouse and are compelled to persist with the pregnancy owing to patriarchal mindset. The fundamental problem at this moment lies not in the fact that abortion is misunderstood; instead, that people are misinformed and unaware about it.

Just 20%, of all health clinics in India have the capacity to carry out abortions due to a shortage of doctors and a lack of necessary equipment. Accessibility to private doctors and nurses is limited mainly because of financial limitations. Female foeticide remains a huge societal curse which India continues to struggle with. Although the government has outlawed sex-determination with the goal to prevent it, the act still continues to be carried out in several Indian states, often without the will of the women. Given the illegal nature of the process, these abortions are performed in highly dangerous settings rather than in hospitals. Pertaining to abortion, India's legal framework is progressive in nature particularly when compared to the regressive abortion regulations found in numerous prosperous countries, notably the United States of America. Unfortunately, the socio-cultural elements that impact the implementation of the abortion legislation typically give reason for impediments to abortion. Many communities of our culture value the lives of unborn infants more than the lives of their mothers. This is due to the society's poor approach and attitude for women and their lives, which conveys its effects in the form of sexual assault, domestic abuse, and inequality. Comprehensive shift is only attainable through modifying societal principles and thoughts, which are still vehemently built around patriarchy.

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