
THE LEGAL STATUS OF THE RIGHT TO ABORTION IN INDIA

Dr. S.M. Abinaya, Advocate

ABSTRACT

The Right to Abortion is a controversial right in India. Every woman in India irrespective of any discrimination as to the marital relationship, have a complete access to safe and secure abortion as far as it falls under the regime of certain conditions imposed by the Medical Termination of Pregnancy Act 1971. The recent amendments and Judgments had uplifted the reproduction rights of women. Millions of women in Rural India suffers due to unawareness and lack of education or knowledge on the abortion rights, due to which the health and wellbeing of the women are deeply affected and often churns out to be fatal than an injury. Due to the life-threatening difficulties faced by the Women in abortion, the Judiciary and Legislative had besieged amendment into the Medical Termination of Pregnancy Act in 2021, which had increased the gestation period and enhanced woman reproductive rights. The main principle notion behind the Abortion laws in India and its disastrous shortcomings are discussed by the researcher. This research tends to reveal the problems faced by women to access abortion and inherent human rights of women in India.

Keywords: Abortion, Reproductive Rights, Human Rights, Health, Foetus etc.

INTRODUCTION:

The reproductive rights of women in India are constantly besieged by regressive laws and social stigmas, which worsens the condition thereby denying access and safety towards abortion. There are various factors that constitutes the need to Abortion. The Medical Termination Of Pregnancy (Amendment) Act 2021 had elaborated the scope of the abortion in India. However, the Patriarchal Societal Structure and its notions stigmatizes women who opt for abortion. These societal stigmas had imposed severe barriers for women from enjoying their reproductive rights and had created gender inequality & injustice to women. Due to the threatening factors women are exposed to severe mental and physical trauma and to fatality. The deaths and health complications in women due to unsafe abortion had lead to severe impact which leads to severe life threatening disease and fatality. In a research paper published by Guttmacher Institute, it was found out that 15.6 million abortions were carried out in India in 2015. Whereas the United Nations Population Fund (UNFPA) had released a report on 2022 which reveals 76% of the abortions in India which had occurred between 2007 to 2011 are classified as unsafe. This show cause that the women in India are still resorting to unsafe abortion methods. In our society, the women are considered as caregivers, as a result their health issues are often ignored or dismissed, leading to inadequate or delayed treatment. It is predominant to state that unawareness of their rights is one of the most important reasons for this detrimental occurrence. Women particularly in rural areas remain unaware of their legal rights due to which access to safe abortion are not reachable to them.

Majority of the women are not aware about their right to abortion under the Medical Termination Of Pregnancy Act. This Article focuses on the Legality of the Abortion in India and the complications faced by women due to the denial of abortion.

Law And Abortion In India:

The abortion rights were not legalized before 1971 and was criminalised, was criminalized under section 312 of the Indian Penal Code. However, during 1971, the Indian constitution had granted abortion rights to women. The main reason behind the criminalisation of the abortion were due to increase in female infanticide and unequal sex ratio in India, which raised to the biased and patriarchy mindset of the Society. In order to prevent this and to uplift the women and balance the sex ratio, the abortion of foetus was criminalised. The Shah Committee appointed by the government of India in 1964 performed a study on the socio-culture, medical

and legal scenarios for abortion. The committee stated many field studies and recommended legalizing abortion. In 1971, the Medical Termination of Pregnancy Act was included in the constitution. It inferred the right of abortion to women up to 20 weeks of pregnancy during particular circumstances which we be elaborately discussed in this research article. Due to the recent amendment in the Medical Termination of Pregnancy Amendment Act 2021 the gestation period for abortion has been increased from 20 weeks to 24 weeks.

The Legality of Abortion in India grants access to women to abort the foetus under various grounds under The Medical Termination of Pregnancy (MTP) Act, 1971. This act enables women to access safe and legal abortion services. In 2021, MTP Amendment Act 2021 was passed with certain amendments to the MTP Act 1971, such as women being allowed to seek safe abortion services on grounds of contraceptive failure, an increase in gestation limit to 24 weeks for special categories of women, and opinion of one abortion service provider required up to 20 weeks of gestation. Abortion can now be performed until 24 weeks of pregnancy. The grounds for legal abortion are as follows:

1. When continuation of pregnancy is a risk to the life of a pregnant woman or could cause grave injury to her physical or mental health;
2. When there is substantial risk that the child, if born or dead would be seriously handicapped due to physical or mental abnormalities;
3. When pregnancy is caused due to rape (presumed to cause grave injury to the mental health of the woman);
4. When pregnancy is caused due to failure of contraceptives used by a married woman or her husband (presumed to constitute grave injury to mental health of the woman).
5. When the socio-economic condition of the family is poor and the couple already has 2–3 children.

The abortions which are provided by the healthcare workers and with methods recommended by the WHO are classified as Safe abortions. The abortions that are provided by the trained providers using non-recommended methods or using a safe method but without adequate information or support from a trained individual are classified as less safe abortion. The abortion done by a trained provider using dangerous, invasive methods are unsafe abortions.

Before 1971, abortion was criminalized under Section 312 of the Indian Penal Code, 1860, describing it as intentionally "causing miscarriage". Except in cases where abortion was carried

out to save the life of the woman, it was a punishable offense and criminalized women/providers, with whoever voluntarily caused a woman with child to miscarry facing three years in prison and/or a fine, and the woman availing of the service facing seven years in prison and/or a fine. The MTP Act specifies – (i) who can terminate a pregnancy; (ii) till when a pregnancy can be terminated; and (iii) where can a pregnancy be terminated. The MTP Rules and Regulations, 2003 detail training and certification requirements for a provider and facility; and provide reporting and documentation requirements for safe and legal termination of pregnancy. As per the MTP Act, pregnancy can be terminated only by a registered medical practitioner (RMP) who meets the following requirements:

- (i) has a recognized medical qualification under the Indian Medical Council Act
- (ii) whose name is entered in the State Medical Register
- (iii) who has such experience or training in gynaecology and obstetrics as per the MTP Rules

Enhancement of Abortion Rights by Court:

The Court had made significant ruling by promoting the abortion cum reproductive rights of women in India by entitling all women irrespective of the marital status to abort, further had extended the prerequisite conditions necessary for abortion from Health Problem to poor income and mental health of the women and thereby increasing the gestation period from 20 weeks to 24 weeks and in case of necessity, it is extended more than 24 weeks. Furthermore, the consent towards abortion predominantly lies with the women thereby giving her more liberty to choose her reproductive rights.

The Supreme Court had stated that all women, whether married or not, have equal rights to access abortion up to 24 weeks of gestation, in compliance with the provisions of the Medical Termination of Pregnancy Act, 1971 (MTP Act). As the court held, *“the right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical wellbeing also injures the dignity of women.”* Thus, the court interprets reproductive rights to include not only the right of choice but also a constellation of other rights – the right to access education and information about contraception, the right to access safe and legal abortions, and the right to reproductive health care.

In **Pooja Kumari -Vs Gncld & Anr 2022**, The Delhi High Court had granted the wife to abort the 33 weeks child considering the abnormalities of the child. Under certain circumstances the gestation period is increased.

In **Suchitra Srivastava -Vs- Chandigarh Administration (2009) 9 SCC 1**, The **Supreme Court** had recognised a woman's right to make reproductive choices as a dimension of 'personal liberty', as understood under Article 21 of the Constitution of India. Further had enhanced the rights of women to abort/medically terminate the pregnancy and added the personal choice of women along with other factors determining the abortion such as the gestational period, the medical condition of the foetus, the physical and mental health of the woman, and other such factors.

In **Own Motion -Vs- State Of Maharashtra 2015**, The **Bombay High Court** had interpreted the MTP Act and held that compelling a woman to continue any unwanted pregnancy violates a woman's bodily integrity, aggravates her mental trauma and has a deleterious effect on the mental health of the woman because of the immediate social, financial and other consequences flowing from the pregnancy.

In **Sidra Mehboob Shaikh -Vs- State Of Maharashtra SCC 2004**, The **Supreme Court** had permitted the petitioner to undergo medical termination of her pregnancy on the ground that compelling her to continue with her unwanted pregnancy would be oppressive, and would likely cause a grave injury to her mental health.

Impediment in accessing Abortion Rights:

The women across India are unable to get access to abortion rights due to lack of knowledge and accessibility. Its crucial on the part of the Government to take proactive steps in providing education and awareness on reproduction rights of the women in India.

Due to lack of knowledge and awareness almost 56% of abortions in India are under the category of unsafe. Unsafe abortions is a common recourse for most women in the country, including in the rural pockets, due to various social, economic and logistical barriers. Stigma is another dimension that prevents women from seeking abortions from approved facilities. Despite India's extensive efforts to improve maternal and reproductive health, wide geographical disparities exist between its urban and rural population. Interventions at various socio-ecologic and cultural levels, along with improved health literacy, access to improved health care and sanitation need attention when formulating and implementing policies and programs for equitable progress towards improved maternal and reproductive health. Unsafe abortion, the third leading cause of maternal deaths in the country, contributes eight per cent

of all such deaths annually with 13 women dying each day. Several factors contribute to women opting for abortion outside the accredited abortion centres including:

1. Woman denied services as she is unable fulfil the requirement as per the MTP act, thus resorting to unsafe means
2. Shortage of providers/absence of competent health professionals and poor perceived quality of care in government facilities in rural areas, is another major reason, as many rural and poor areas lack registered medical providers, supplies and infrastructure
3. High abortion cost at hospitals in the cities. Private sector charges are huge and unaffordable for the poor
4. Reluctance to obtain services from known neighborhood clinics due to lack of confidentiality
5. Lack of awareness about the need to seek abortion early in pregnancy
6. Providers denying services because of biases or misinformation around how laws governing sex selection, child sexual abuse and abortion intersect

Hence the Indian Government has to run campaigns to raise awareness about the reproduction rights of the women and its aspect under the MTP Act.

The Judiciary is bringing a great aspect by modifying the laws considering the health and psychological aspects undergone by women during pregnancy times.

Suggestion:

The Indian Government should run campaigns to raise awareness on MTP Act and its amendments through Public service announcements on radio, social media, Tv etc. The health clinics and hospitals must provide pamphlets and other informative material for women and other abortions seekers. The Women Organisations and other Non-Governmental Organisations need to organise workshops and seminars to educate women about their rights under law. Furthermore, it is pertinent to mention that the schools and colleges plays a crucial role, hence they need to spread awareness on sexual education and need to include these topics in their curriculum.

Conclusion:

The right to choose what to do with one's body is a fundamental human right which cannot be

denied. Its denial would potentially cause great violation to women's basic dignity and autonomy. There arises a great need for spreading awareness about abortion since they are essential for protecting women's health and reducing unsafe abortions and upholding women's right at large. First and foremost a shift in societal perspectives towards the abortion and overall health is imperative. The only way to reduce the number of unsafe abortion is to ensure every pregnancy is planned and desired.

References:

1. Abortion Law, Policy and Services in India: A Critical Review by Siddhivinayak S Hirve, Taylor and Francis Online 2005
2. Abortion needs of women in India: A case study of rural Maharashtra by Manisha Gupte, Sunita Bandewar and Hemlata Pisal, Reproductive Health Matter 1997
3. Abortion Practice In India: Review Of Literature by Heidi Bart Johnston 2002
4. Abortion in India: Emerging Issues From Qualitative Studies by Leela Visaria, Vimala Ramachandaran, Bela Ganatra and Shveta Kalyanwala, Economic and Political Weekly 2004
5. Medical students' attitudes and perceptions on abortion: a cross-sectional survey among medical interns in Maharashtra, India by Sussane, 2014
6. Abortion and the Law in India by K.D Guar, Cochin University Law Review Vol. XV, 1991 p. 123-143
7. The Niketa Mehta case: does the right to abortion threaten disability rights? by Neha Madhiwalla, Indian Journal of Medical Ethics Vol V No 4 October-December 2008
8. ABORTION LAWS IN INDIA: A CRITICAL ANALYSIS by Trishi Anand, International Journal of Mechanical Engineering 2022
9. Conflicting abortion laws in India: Unintended Barriers to safe abortion for adolescent girls by D. Jain, 2019
10. THE SOCIO-CULTURAL ASPECT OF ABORTION IN INDIA: LAW, ETHICS AND PRACTISE by Bhavish Gupta and Meenu Gupta, 2016, ILI Law Review