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ABORTION: A CRITICAL EXAMINATION OF RIGHTS AND RESPONSIBILITIES

AUTHORED BY - SAHIL NAGGAR

ABSTRACT

Abortion is a sensitive topic for debate. It has remained so for a long time. Until 1960's Abortion was illegal in India, it was legalized through the medical termination of pregnancy (MTP) act, 1971.¹ In this research paper we have given information regarding the abortion from all around the world. Public perspective regarding it, its impact on society, and social and religious debate on it.

INTRODUCTION

Abortion is termination of pregnancy. It occurs without intervention known as miscarriage. The main difference between these two is intention. In abortion, intention is there whereas in miscarriage it is not. It occurs 30-40% in all the pregnancies². Basically this is the safest and majoritarily legal way to get out of unwanted pregnancy. But there are many unsafe abortions also which are done by people with lack of skills or lack of resources. Accounting for about 13% of maternal deaths worldwide. In regions where unsafe abortions are common, the death rate can be as high as more than 200 deaths per 100,000 abortions³. So for abortion women should have proper reason to get aborted as everyone has right to life according to **UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948** worldwide as is referred by **UNITED NATIONS** which has partial authority over the world. In India, article 21 governs it.

HISTORICAL BACKGROUND

It starts from as early as 1550 BCE and still very prevalent but the procedures are changed drastically. From the written evidence of Ebers Papyrus (ancient Egyptian text). We get the procedure of abortion using a plant fiber tampon coated with honey and crushed dates. So many herbs like Silphium and Pennyroyal are used in this.

¹ MTP, ACT 1971

² [The Johns Hopkins Manual of Gynecology and Obstetrics](#)

³ WORLD HEALTH ORGANISATION REVIEW REPORT 2003-2012

The word abortion is derived from Latin word abortio which meaning "away, from", and oriri, meaning "be born".

INDIAN CONTEXT (Ancient India)

The history of abortion in ancient India can be traced to the Vedic and Samriti law. Herein also there is a debate between the different scholars of Vedas for example Sage Manu who composed Manusmriti was against the destruction of semen and its by product⁴. But there were slightly liberal philosophers also like Sage Narad (From Nepal) who were of the opinion that if the abortion is important for women welfare, it ought to be done. Abortion method in ancient India were of many like Oral insertion in which a women would ingest a variety of substances to induce an abortion and direct installation of certain substances in the vagina of women like black paper, copper, quinine not in there raw form but in a type of mixture.

Comparison regarding abortion throughout the world

In this paragraph we will compare some of the countries regarding abortion- India enforced Indian penal code(IPC) in 1860,in this certain element of colonial era was also there like British's because of their Christian believe used to consider abortion as sin and in India in Hinduism and Islam also abortion was not also considered very good. So in IPC it is punishable offence to abort a child⁵ but a very important thing to note down is that it is punishable only if there is no consent of women, if the consent of women is there then it is not punishable.

CHINA

In early 1950's Chinese government made abortion illegal for punishment for those who received and perform illegal abortion. By the time laws were relaxed in 1980 China implemented one child policy to balance their overgrowing population now it was not possible without a mass scale abortion. In 2016, two child policy was implemented by China. Both of these effected in relaxing the rigidness of abortion law. China has highest number of abortion in the world⁶. Whereas RUSSIA, has highest rate of abortion in the world.

Landmark Judgements of abortion in India

- The Supreme Court, in **SUCHITA SRIVASTVA and Anr Vs Chandigarh administration (2009)**, asserted that a woman's right to make reproductive choices is

⁴ 9th Chapter of Manusmriti

⁵ .(Section 312 to section 316)

⁶ China report 2009

also a dimension of ‘personal liberty’, as understood under Article 21 of the Constitution of India.

- In **Z Vs STATE OF BIHAR (2018)**, the top court recognised the disastrous effects of unnecessary delays and lack of promptitude in the attitude of authorities when dealing with termination of pregnancies, as it rebuked the “negligence and carelessness” of the authorities in failing to terminate the pregnancy as permitted by law.
- In **X Vs Union of India AIR 2017 SC 1055**, The Supreme Court granted permission for termination of pregnancy of duration of 24 weeks since it was noticed that the foetus could not survive.
- **VAISHALI PRAMOD SONAWANE & Another Vs UNION OF INDIA (2019)**, ruled that a pregnancy can be terminated after 20 weeks also in situations when there is a substantial risk, if the child is born, it would suffer from such physical and mental abnormalities as to be seriously handicapped.
- In **XYZ v. STATE OF MAHARASHTRA (2021)**⁷, a minor was allowed to terminate her pregnancy in the 26th week after considering her socio-economic condition, and the impact of the continuation of pregnancy on her mental health.

Public Perspective on Abortion

Abortion is an issue of great public concern and debate. The majority of USA region supports women’s right to choose it. As of November 2024, abortion is almost completely illegal in 12 states of USA:

Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia.⁸

USA have been the prior supporter of liberalism that advocates right to choose the life’s decision. Abortion law in US has been changed mostly by the Supreme Court Of USA after **ROE VS WADE 1973**, abortion was made legal in 1973 but women have been abortions for hundreds of years before that as we have already discussed in the previous paragraphs. But this case law was important because after that there were many other cases brought before the court involving federal and state funding of abortion. Father’s right, parental consent for minors and many other final points of law and policy regarding abortion depends upon different states of USA. States like **California** in which public opinion is very liberal regarding the topic of

⁷ In The High Court Of Judicature Of Bombay Bench At Aurangabad Criminal Appeal No. 547 Of 2020

⁸ Teen Vogue Site

abortion. They take right to abort as their fundamental right but state like **Texas, South Dakota** in which public opinion is such that abortion is the killing of a child and that is a sin in Christianity. So they take topic of abortion in a very conservative manner.

MTP act, 1971

Medical termination of pregnancy act, 1971 deals with pregnancy laws in **INDIA**.

Abortion is no longer an exclusively surgical procedure. Medical technology has broadened the scope of abortion by introducing medication to induce abortion such as medicine like **RU486**. Since it can perform now with a pill, it will almost impossible to regulate it as before.

- The **MTP Act, 1971**, allows abortion **up to 20 weeks of gestation**, with the consent of the woman and **on the advice of one registered medical practitioner (RMP)**. However, the law was **updated in 2002 and 2021**.
 - The **MTP Amendment Act, 2021** permits **abortion from 20 to 24 weeks of gestation** for specific cases like rape survivors, with approval from two doctors.
 - It sets up **state level Medical Boards** to decide if a pregnancy may be terminated **after 24 weeks** in cases of substantial fetal abnormalities.
 - It extends the **failure of contraceptive clauses to unmarried women** (initially only married women), allowing them **to seek abortion services** on grounds of their choice, irrespective of their marital status.
 - Consent requirements vary based on age and mental state, ensuring medical practitioner oversight.
- The Constitution of India, which guarantees the **right to life and personal liberty** to all citizens under **Article 21**. This right has been interpreted by the Supreme Court of India to **include the right to reproductive choice** and autonomy for women.

Religious Perspective regarding abortion

CHRISTIANITY

In Christianity abortion is a sin and is regarded as the killing of a human being. Christianity is so tough on this particular topic that even in some branches of Christianity such as Catholics, the person inducing abortion should be get killed⁹.

⁹ Exodus 21:22-25

ISLAM

Islam also follows the same principality regarding abortion as of Christianity. Basically, all the Abhramic religions are very rigid regarding abortion.

HINDUISM

There are so many branches of Hinduism that has different mind-set regarding the abortion and it has thoroughly elucidated by the different philosophers and sages in Hinduism and some of them we have already discussed like Sage manu, Sage narad. As we have discussed in previous paragraphs HINDUISM.

SIKHISM, BUDHISM, JAINISM

Basically all the dharmik religions such as Hinduism, Sikhism, Budhism, Jainism follows same concept of Dharma, Karma and Moksh (Salvation) and the basic philosophy that is generally adopted by all these religions is that abortion is quite bad and if the consent of the women is not there then it is nearly a sin. Although abortion regarding girl child was quite normal in history of India but it doesn't have any connection with any of the religion that has been developd in India.

Conclusion

Basically if we see in a legal perspective according to article 21 of Indian Constitution, women's has the right to control her body sanely. So according to that abortion is not at all a very big problem legally. But as we have concluded that the public perspective regarding it varies with different societies, conservative society regard it as a very bad deed and liberal societies are very open regarding abortion. So we concluded that at least of the women's consent is not their then this act should be (as it is) punishable.