



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ABORTION AND ITS DIMENSIONS

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Abstract –

Abortion laws have long been a source of contention in India and in various other countries, like the USA. This paper demonstrates how, in spite of America being a developed nation, it has made abortion illegal (beyond 13 weeks) in the recent Supreme Court ruling that overturned Roe v. Wade, and how India, which is still a developing country, has made the abortion laws so feasible for its citizens through the MTP Amendment Act of 2021. The purpose of this paper is to investigate the legal framework around abortion in India, the difficulties faced by women seeking abortions, and the impact of these difficulties on their health and well-being. It discusses how there can never be a complete ban on abortions; only safe and legal abortions can be banned, which can be very detrimental to the health of women, and how putting a ban on abortion incentivizes the patriarchal mindset of the society. It also emphasizes the necessity of understanding the historical context as well as the present problems that women seeking abortions face in various nations. The pro-life or pro-choice divide between the people is also analyzed here, explaining how pro-choice is better than the other one. Thus, this paper suggests and analyzes the importance of abortion in safeguarding the health of women.

Keywords- Ban, MTP Amendment Act 2021, the health of women, legal framework, global scenario.

INTRODUCTION

Abortion has long been a contentious social problem. Both parties of the argument have strong feelings and opinions about the topic. On the one hand, proponents contend that women should have the freedom to decide what happens to their bodies, while detractors contend that abortion is immoral and breaches the sanctity of life. However, the conditions in which the child was conceived, the capability of the women to raise the child and all the other circumstances which

would affect the mother or the child in any way should also be kept in mind while deciding on this contentious issue.

MEANING OF ABORTION

According to the Britannica dictionary, Abortion can be defined as “the expulsion of a foetus from the [uterus](#) before it has reached the stage of viability (in human beings, usually about the 20th week of gestation). An abortion may occur spontaneously, in which case it is also called a [miscarriage](#), or it may be brought on purposefully, in which case it is often called an [induced](#) abortion.”

In *Suchita Srivastava v. Chandigarh Administration* (2009)¹ it was held that the expulsion or evacuation of a viable human foetus from the womb of a pregnant woman before it reaches full term

In *Roe v. Wade* (1973)², the landmark United States Supreme Court case that established the constitutional right to abortion, abortion was defined as "the termination of a pregnancy by the expulsion or removal of a foetus or embryo from the uterus."

In the Canadian case of *R. v. Morgentaler* (1988)³, the Supreme Court of Canada defined abortion as "the interruption of a pregnancy by the death of the foetus or removal of the foetus from the maternal womb."

In the United Kingdom, the 1967 Abortion Act⁴ defines abortion as "the termination of a pregnancy by the removal or expulsion from the uterus of a foetus, other than a miscarriage."

HISTORY OF ABORTION

There is a long history of women assisting one another in having abortions. Women healers in Western Europe and the United States performed abortions and instructed other women to do so without legal restrictions until the late 1800s. Britain introduced the first anti-abortion laws in 1803, which gradually became stronger over the century. As individual states moved to criminalise abortion, the United States followed suit. By 1880, most abortions in the United States were prohibited, save where "necessary to save the woman's life." Nonetheless, the tradition of women's right to abortion was well established in American society by that time; abortionists continued to

¹ *Suchita Srivastava v. Chandigarh Admn.*, (2009) 9 SCC 1

² *Roe v. Wade*, 410 U.S. 113 (1973)

³ *R. v. Morgentaler*, [1988] 1 SCR 30

⁴ United Kingdom; Abortion Act 1967

practise freely with public backing, and juries refused to punish them. Women began to actively struggle for their rights in the 1960s, motivated by the civil rights and anti-war movements. The rapidly expanding women's movement made the hitherto taboo subject of abortion public. Women burdened by years of secret stood up in front of strangers to discuss their illegal abortions, erupting in rage, pain, and dread. Women marched, rallied, and advocated for on-demand abortion. Civil rights organisations and liberal clergy joined together to promote women. The famous Roe v. Wade decision, issued on January 22, 1973, held that the "right of privacy...founded in the Fourteenth Amendment's idea of personal liberty...is broad enough to cover a woman's decision whether or not to terminate her pregnancy." The Court ruled that until the conclusion of the first trimester of a pregnancy, only a pregnant woman and her doctor have the legal right to choose abortion. Only in the interest of the woman's safety can states prohibit second-trimester abortions. Only during the third trimester can a "viable foetus" (one that can survive outside the womb) be protected. If a pregnant woman's life or health is in jeopardy, she cannot be coerced into continuing the pregnancy.⁵

ABORTION IN INDIA

The problem of abortion in India dates back to the late nineteenth century, when the British colonial administration adopted the Indian Criminal Code in 1860, which criminalised abortion in most instances. Even after India attained independence in 1947, this law remained in effect. Yet, in 1971, the Indian government passed the Medical Termination of Pregnancy Act, which legalised abortion in certain circumstances.

Prior to the Medical Termination of Pregnancy Act of 1971, providers of abortion services and women faced up to three and seven years in prison, respectively, for providing and seeking an abortion. The sole exception to this law was if there was a threat to the pregnant woman's life. After the Medical Termination of Pregnancy Act of 1971, abortion would be lawful if competent medical practitioners agreed. This progressive measure was more of a means to regulate India's fast rising population, particularly in the poorer socioeconomic areas of the country, than it was a product of the women's movement in India. The legal limit of 20 weeks' gestation had long been questioned. There was no justification for the 20-week limit to remain after medical facilities became available in 1971, allowing pregnancies to be aborted at 20 weeks. A revised MTP Act

⁵ Shivani Deshmukh; A Comprehensive History Of Abortion Laws In India: 1971-2021; Jul 13, 2022; <https://feminisminindia.com/2022/07/13/a-comprehensive-history-of-abortion-laws-in-india-1971-2021/>

took effect in 2021, allowing abortion for up to 24 weeks of pregnancy under certain conditions. Victims of sexual assault, juveniles, widows or divorcees, women with disabilities, mentally sick women, foetuses with physical or mental abnormalities, and women in emergencies are all exempt from the new restriction.⁶

The new Act extended the limit for victims of sexual assault, minors, widows or divorcees, women with disabilities, mentally ill women, foetuses with physical or mental abnormalities, and women in emergencies.

CULTURAL CONTEXT

Abortion in India is affected by cultural norms and behaviours that differ by location and society. The largest religion in India, Hinduism, generally prohibits abortion since it is seen as the destruction of a potential life. However, the faith understands that there may be times when abortion is required, such as when the mother's life is in danger or when the pregnancy is the consequence of rape. In rare circumstances, religious leaders may be consulted to provide moral counselling regarding abortion. Other religions in India, such as Islam and Christianity, also have varying views on abortion. In Islam, the general principle is that abortion is not permitted unless the mother's life is at risk, and even then, it is a decision that should be made after careful consideration. In Christianity, views on abortion vary by denomination, with some opposing it on the basis of the sanctity of life, while others believe that it is a decision that should be made by the individual and their conscience. Cultural attitudes concerning women and gender roles might also influence abortion attitudes in India. Women who seek abortions may experience social stigma and prejudice, particularly in more conservative areas. In rare situations, women may be shunned by their families or communities for obtaining abortions, and may endure undesirable effects such as forced marriage or social isolation.

LEGAL FRAMEWORK SURROUNDING THE ABORTION LAWS IN INDIA

On August 25, 1964, the Central Family Planning Board suggested that the Ministry of Health form a committee to explore the necessity for abortion laws. The recommendation was adopted in

⁶ Supra Note 5

the latter half of 1964, and a committee was formed with representatives from various Indian public and commercial agencies. The Shantilal Shah Committee was formed. On December 30, 1966, this committee issued its report after analysing a great amount of statistical data accessible at the time. Based on this study, the government passed the Medical Termination of Pregnancy Act, 1971⁷ and liberalised abortion regulations in India.⁸ The Act, which has only eight parts, addresses issues such as the time, place, and circumstances under which a pregnancy may be terminated by a certified medical practitioner. It legalises abortion in cases when contraception fails or if the pregnancy may have an adverse effect on the pregnant woman's physical or mental health. The pregnant woman's agreement is necessary unless she is a minor or a lunatic, in which case her guardian's approval is required. The act allows for the termination of a pregnancy up to 20 weeks of gestation on medical, social, humanitarian, and eugenic reasons in a safe atmosphere by a recognised licenced and suitably competent medical practitioner.⁹ This Act allows for the termination of a pregnancy up to 12 weeks of gestation based on the opinion of a single licenced medical practitioner, and between 12 and 20 weeks of gestation based on the opinions of two registered medical practitioners. The grounds include grave risk to the woman's physical or mental health in her current or foreseeable environment, such as when pregnancy results from contraceptive failure, or humanitarian grounds, or if pregnancy results from a sex crime such as rape or intercourse with a mentally-challenged woman, or eugenic grounds, where there is reason to suspect substantial risk that the child, if born, will suffer from deformity or disease. The law allows abortions to be performed in any government-run hospital, but any institution in the private sector must be approved or certified. The law makes exceptions for abortions performed to save a woman's life: the doctor does not need the required experience or training but must still be a registered medical practitioner, a second opinion is not required for abortions performed after 12 weeks, and the facility does not need prior certification.¹⁰ The Medical Termination of Pregnancy Rules and Regulations 1975, define the criteria and procedures for approval of an abortion facility, procedures for consent, keeping records and reports, and ensuring confidentiality. Any termination of pregnancy done at a hospital or other facility without prior approval of the Government is deemed illegal and the onus is on the hospital to obtain prior approval.¹¹

⁷ MTP Act of 1971

⁸ Government of India, Report of the Committee to Study the Question of Legalisation of Abortion 36 (Ministry of Health and Family, 1966)

⁹ Medical Termination of Pregnancy Act, 1972 (Act of 1971), s. 3

¹⁰ V Krishnan v G. Rajan & others HCHP 1450 of 19993.

¹¹ Government of India. The Medical Termination of Pregnancy Rules and Regulations. Vide GSR 2543, New Delhi 7 Gazette of India, 1975.

MEDICAL TERMINATION OF PREGNANCY ACT, 1971-

The Medical Termination of Pregnancy (Amendment) Act of 2021 amends the MTPA 1971 to raise the upper limit for abortion for certain sorts of women from 20 to 24 weeks. The Amendment elevates the upper gestation limit from 20 to 24 weeks for specific groups of women, which would be defined in the MTPA 2021 and would cover, among others, rape survivors, incest victims, and other vulnerable women (such as differently-abled women and minors).

On March 16, 2021, the Medical Termination of Pregnancy (Amendment) Act, 2021 (MTPA 2021) was passed, modifying the provisions of the Medical Termination of Pregnancy Act, 1971. (MTPA 1971). In general, the Act governs when and how a pregnancy can be terminated. The bill expands the window for abortion.

The Medical Termination of Pregnancy (Amendment) Bill, 2021 intends to increase women's access to safe and legal abortion services on therapeutic, eugenic, humanitarian, or social grounds. The amendments include the substitution of certain sub-sections, the insertion of certain new clauses under certain sections of the existing Medical Termination of Pregnancy Act, 1971, to increase the upper gestation limit for termination of pregnancy under certain conditions, and to strengthen access to comprehensive abortion care under strict conditions, without compromising service and quality of safe abortion.

THE CHILDREN'S PROTECTION FROM SEXUAL OFFENSES ACT OF 2012

The age for consensual sexual intercourse is set at 18 by the Protection of Children from Sexual Offenses Act of 2012. As a result, POCSO considers all pregnant women under the age of 18 to be rape survivors and requires providers to report abuse. ⁸ This reporting requirement runs counter to the MTP Act's confidentiality and privacy provisions. In 2015, the Supreme Court permitted abortion after 20 weeks if a team of doctors judged that the pregnancy would be harmful to the girl's mental and physical health. It sets a significant precedent for improved access to safe abortion services for minor rape survivors.

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RECENT CHANGES RELATED TO ABORTION

LAWS IN INDIA-

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ACCESS TO ABORTION SERVICES

Abortion is permissible in India under specific conditions, such as when the pregnancy endangers the mother or child's life, or in situations of rape or foetal abnormalities. Despite the legal status of abortion, many sections of the country have limited access to safe and legal abortion services. Many variables influence the availability and accessibility of abortion services in India, including cost, geographic location, and stigma. Many women seeking abortion treatments in India face

severe financial challenges. Even though the government provides free or subsidised treatments to select groups, such as Below Poverty Line (BPL) families and women in government hospitals, many women are still obliged to pay for abortion procedures out of pocket. Private clinics and hospitals frequently demand high prices, making it difficult for low-income women to obtain safe and legal abortions. Traveling to an abortion centre can also be expensive, especially for women who reside in remote areas.

Another important element influencing access to abortion services in India is geographic location. A sizable majority of India's population lives in rural areas, where healthcare infrastructure is frequently inadequate. While seeking abortion services in these locations, women confront a number of problems, including limited access to skilled healthcare practitioners, a lack of medical equipment and supplies, and lengthy distances to travel to facilities that provide abortion services. Furthermore, social and cultural conservatism is more prevalent in many rural communities, which might stigmatise and prevent women from accessing abortion services.

Stigma is a widespread issue that affects women seeking abortion services in India. Abortion is still considered taboo in many regions of the country, and women who seek abortions may face severe social shame and discrimination. This stigma might cause women to feel humiliated or embarrassed about obtaining abortion services, making it less likely that they will use them. The stigma also has an impact on the quality of treatment that women receive while seeking abortion services, since many healthcare providers may be unwilling to give abortions owing to social pressure and shame.

THE ROLE OF HEALTHCARE PROVIDERS IN PROVIDING SAFE AND LEGAL ABORTIONS

The provision of safe and legal abortions is a complex topic that involves a wide spectrum of healthcare providers, including doctors, nurses, and other medical experts. These persons serve a key role in ensuring that women have access to safe and legal abortion services, and that these services are given in accordance with all applicable laws and regulations. One of the most critical duties of healthcare providers in providing safe and legal abortions is to give women with accurate and unbiased information about their options. This covers information regarding the dangers and benefits of various abortion methods, as well as the legal prerequisites for obtaining an abortion

in a specific country. Healthcare practitioners must also ensure that women are fully educated about their abortion rights and options, including the availability of counselling and support services.

Healthcare practitioners must guarantee that women receive high-quality medical care throughout the abortion process, in addition to giving accurate and unbiased information. This involves administering all essential medical tests and assessments, ensuring that women receive adequate pain management and anaesthesia, and monitoring their health and well-being both during and after the treatment. Women must also have access to any necessary follow-up care, such as counselling and support services, according to healthcare providers.

The crucial duty of healthcare practitioners in providing safe and legal abortions is to guarantee that all relevant laws and regulations are followed. This includes adhering to all necessary licence and certification requirements, as well as adhering to all relevant legal and ethical standards. Healthcare professionals must also guarantee that women express informed permission before receiving abortion services, and that all patient information is kept discreet and private.

Healthcare practitioners must be prepared to negotiate the complicated social and political problems that frequently surround the provision of abortion services. This may include campaigning for their patients' rights and interests in the face of opposition from anti-abortion groups, as well as striving to build a supportive and inclusive atmosphere for women who choose to receive abortion services.¹²

¹² Induced Abortion; September 2019; <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>