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Abortion: A Socio-Legal Perspective

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ABSTRACT

Abortion! The multi-faceted, concerns aspect of law, religion, ethics and medicines. Abortion has become a social issue over time despite being a women's personal choice. The first thought which comes to our mind when we hear this word is NO, how can we kill someone who is not even born? But the issue is right of women over their reproductive choice. The basic premise of abortion is having complete control over the body including the right to prevent unwanted pregnancy. Abortion is a matter of choice and not a debatable social issue. Abortion does not punish the unborn child but not having an abortion punishes the woman all her life. To lead to suggestions to solve this grave issue, the article discusses the history of abortion from a national and international perspective. The article also lights on the Medical Termination of Pregnancy act with significant recent socio-legal developments and provides an overview of abortion law..

Keywords: Abortion, Abortion law in India, MTP Act, women's abortion rights.

I. INTRODUCTION

ABORTION is today's most controversial and divisive health-related topic. Abortion is present from ages and women have practiced different forms of birth control and abortion. The prevalence of abortion as a problem in women's reproductive lives can be seen, in recent regulatory and legal changes, advancements in medical technology, and maternal fatalities from illegal abortions. Despite being a woman's reproductive right to choose, unsafe abortions are nonetheless common as a way for women to avoid social stigma. The debate between pro-choice and pro-life may not be as black and white as most people believe, it has another perspective as well. Pro-choice is more favorable for the whole women's community. The traditional arguments for abortion have taken place so much that the legal argument of having an abortion as a right finds it tough and makes it look like a taboo. The time has arrived to look at it from the perspective of women reproductive right rather than fetus killing. Abortion is the fulcrum of greater ideological conflict in which society, state, motherhood, choice, and rights fight. It is not a simple medico-technical issue anymore.

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II. HISTORICAL BACKGROUND

Earlier, Abortion was stigmatized in Indian society, and women's ethics were questioned whenever they chose such a method. Until the 1960s, abortion was prohibited in India and was punishable by three years of imprisonment and a fine under Section 312 of the Indian Penal Code. Later in the year 1964 the Ministry of Health recommended constituting a committee to study the need for legislation on abortion. The recommendation was adopted in the year 1964 constituting a committee, The Shantilal Shah Committee which was led by Dr. Shantilal Shah. The Committee proposed in 1964 that India's abortion regulations be liberalized to help the nation reduce unsafe abortions and maternal mortality.

On April 1, 1972, the Medical Termination of Pregnancy (MTP) Act, 1971 became operative and was applicable in the whole of India. The 1971 law was based on the principles of the 1967 British Act, which allowed abortion up to 20 weeks of pregnancy. Later, in 1975, the Rajasthan government also passed the regulations implementing the aforesaid act.

The act justified abortion in only a few cases such as,

1. Physical or mental illness in the mother carrying the child.
2. In the event of a sexual assault or rape.
3. In the event of a stillborn child or any functional disorder in the child.

III. MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The act provides the legal framework for abortion in India. It consists of 8 sections that deals with the termination of pregnancy. It broadly specifies, who can terminate the pregnancy, when a pregnancy can be terminated, and where it can be terminated. In 2021, the Indian Parliament passed the Medical Termination of Pregnancy Amendment Act, which sought to reform India's 1971 abortion law. It increases gestational limits, grounds, and procedures for accessing abortion care, which was enacted in response to demands to make safe, high-quality abortion more accessible.

Earlier the MTP act allowed for a twenty-week gestation period but now it has been stretched to twenty-four weeks and it can even go beyond twenty-four weeks in conditions with substantial fetal abnormalities. It also allowed unmarried women to obtain abortions based on "contraception failure." The medical boards are established to determine abortion post-24 weeks. Though the gestation time has increased from 20 to 24 weeks, it's for selective women i.e. rape victims, incest victims, as well as women with severe physical and psychological conditions such as depression, physical disability, or lunatic.

IV. ABORTION AS A CONSTITUTIONAL RIGHT

Human rights are founded on the concept of freedom. The supreme human right is the 'right to live', the foundation of all liberties. Article 21, which is the right to life and personal liberty, is the most valuable of all the fundamental rights granted to citizens. It enshrined one of the most important battles in the form of life and personal liberty, which are guaranteed under Chapter 3 of the Indian Constitution.

In India, the MTP Act of 1971 infringes on the right to dignity, right to privacy, and right to health of women which has been guaranteed by Article 21. It's a women's reproductive choice, whether to bear a child or abort her pregnancy and it falls in the realm of privacy.

In the recent case *X versus The principal secretary health and family welfare department &Anr.*, Justice Chandrachud held that "The rights of reproductive autonomy, dignity, and privacy under *Article 21* of the Constitution gives an unmarried woman the right of choice as to whether or not to bear a child on a similar footing as that of a married woman,". The court further held that it is a violation of *Article 14* of the Constitution to exclude unmarried women while including married women.

V. GLOBAL PERSPECTIVE

In other nations, such as the United States, the landmark judgment of *Roe versus Wade* giving the women right to abortion for almost fifty years has been overturned by Supreme Court under the case *Planned Parenthood versus Casey*.

In the last few years, Argentina and Thailand have legalized abortions with certain limits; Mexico and South Korea have decriminalized abortion; and New Zealand has relaxed abortion restrictions. Colombia also recently made on-demand abortion up to twenty-four weeks of pregnancy legal, the latest sign of a growing "green wave" in Latin America. Although most countries have taken steps to broaden abortion grounds, some, including Honduras and the United States, are tightening restrictions.

VI. SOCIO-ETHICAL PERSPECTIVE

Abortion as an issue, is engraved in society and can be looked positively and negatively manner in almost every nation. India, as a country, carries immense societal baggage where abortion is seen as a stigma. The Medical termination of pregnancy act should be considered as a way to terminate unwanted pregnancies, as a choice of women or a right of women but her freedom is nevertheless a concerned under the act. It emphasizes court procedures and medical board permissions. The women has not been given the right to abort, the discretion is of the courts to

check whether the woman fall under the conditions of sections 3 and 5 of the MTP act.

The famous birth control activist Margeret Sanger once said that “No woman can call herself free until she can choose consciously whether she will or will not be a mother”. The same situation lies today where the nation has allowed women individuals to have the right to almost every possible act except reproductive choice. Though many people believe that abortion is immoral, it is an individual right, that the women of every nation deserve.

Concerning to social stigma, a recent judgment came to the light where the MTP act accepted unmarried women within its ambit after the 2021 amendment. The judgment, *X versus Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi, C. A 5802/2022* made clear that all women are entitled to safe and legal abortion and the distinction between married and unmarried women is unconstitutional. The SC bench headed by Justice DY Chandrachud has said, "It's ultimately the prerogative of each woman to decide as per her material circumstances. Various economic, cultural, or social factors play a part..." This judgment on international safe abortion day leads the ray of hope among women to a brighter and non-judgmental space.

VII. RECOMMENDATIONS

By taking into account the following recommendations, some of the issues surrounding pregnancy termination can be resolved –

1. To improve the quality of services offered for medical abortion, the Central and state governments should work together. Adequate procedures and medical facilities should be provided to protect the life of pregnant women.
2. Establishing a 24-hour medical emergency helpline is crucial so that cases involving abortion services that require immediate treatment can be handled quickly and efficiently.
3. Academic institutions must work to educate children about sex education and the dangers of procedures like fertilization, surrogacy, and abortion so that they can approach such situations in the future with the utmost care and caution.
4. Poor, young, and unmarried women are likely to delay abortion because they are often poorly informed on many fronts. This should be supported by efforts to build awareness and educate women and the community on their sexual and reproductive health. Workshops should be regularly scheduled for literacy and awareness.

VIII. CONCLUSION

No women have an abortion for fun. Abortion a key reproductive choice is still not completely right in India, obviously the patriarchal society always triumphs over the same. Women cannot walk into a health facilities and demand abortion without being questioned about their integrity and upbringing. Indeed approach towards abortion is changing with the passage of time. The Medical Termination of Pregnancy Act of 2021 helped women to terminate their unwanted pregnancies with proper care and facilities. This has reduced unsafe abortion yet there are still many women who are unaware of their rights or choose unsafe abortion to hide from guilt and shame from society. The government needs to raise awareness and make sure that all healthcare facilities abide by all the norms and regulations.

Entailing abortion with the right to privacy and making the abortion law liberal for both married and unmarried women has protected the basic rights of women which will support them mentally during the procedure of abortion and to stand in front of society fearlessly and independently.

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