

STATUS OF ABORTION LAWS IN INDIA

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Best Citation – BHUMIKA THAKUR, STATUS OF ABORTION LAWS IN INDIA, ILE JOURNAL OF WOMEN STUDIES (ILE JWS), 1 (1) of 2023, Pg. 1-4, APIS – 3920 – 0059 | ISBN – 978-81-964391-3-2.

Abstract

The Article revolves around contemporary ideas of abortion laws prevalent in India. This Article quotes Abortion as a right of woman giving them full authority to decide their future and their privilege to give birth. This article portrays women as an individual entity who can decide their best and needn't to be coerced by the society on the basis of their rituals and cultural beliefs. Abortion has emerged as a human right for them. Depriving such essential human right to them is discriminatory and violation of their basic human right i.e. Right to life which also include right to privacy.

Abortion has evolved not just only a biological concept but a legal concept in the Article. A person should have right over their body. Anything done without their consent or on coercion should be purely illegal and arbitrary. A person exercising arbitrary authority over another person's body should be punished under law. The Article upheld the idea of Abortion. This Articles clearly laid importance to their health, future, age and most importantly their consent. We shouldn't forget to deprive a living person their human right while ensuring right to life to whom that is yet to be born.

Lastly, this Article tells about all the provisions, legislations and judicial decisions emerged in support of the idea of Abortion. However, it clearly emphasizes some areas where the need of development is felt.

Keywords – Abortion, Termination, Human rights, Miscarriage, Gestation

Introduction

Abortion is not a new concept it has emerged since the human civilization arise. It is a biological concept which is related to birth of unborn child. A mother is an only person who is well aware of the future of their child. A mother is who gives the birth of her child. Mother and her connection with the child are beyond any bodily relationship. It is too emotional. However, circumstances come when she decides that whether she is ready to give birth or not.

However, Abortion is also associated to various religious ideas and customs. It is also a taboo in many religions. Many traditional values prohibit this freedom to woman. Woman are forced to give birth without there wills. She should have

the right to decide when she is ready to give birth. People should not consider woman a birthing machines. It's her body. It should be her choice.

Abortion is a liberty of women which is approved as a Human right under Article 2 of Universal Declaration of Human rights. Right to life also include Right to bodily integrity.

However, it is still controversial that whether Human rights are available to unborn child also. Do Right to life under Article 21 of Indian constitution extend to the right of unborn child that she / he has the right of life since the day of conceived or It starts from the day of the birth . In our history there is no case dealing with this issue

However, in an American case of **Roe vs. Wade [1]**, it was held by US Supreme Court that the foetus is not alive till the after the date of quickening. When a woman get her pregnancy terminated voluntarily by a service provider. It is called induced abortion or miscarriage. However, Abortion is classified into three types based on safety measure [2]

- Safe Abortion
- Less safe Abortion
- Least safe Abortion

I Background

During the 1960s, Abortion was considered absolutely illegal. Abortion was penalized under Indian Penal code 1860. Under section 312, a woman who voluntarily causes her to miscarriage is punishable with imprisonment for a term atleast of 3 years with fine except when such miscarriage was caused in good faith for the purpose of saving the life of endangered pregnant woman. The law also punishes the person who carries such miscarriage under section 316 for a term of 10 years and fine. Thus, the pregnant woman and the person operating here both were punishable under IPC.

However, as Abortion was criminalized back then there were rampant cases of induced abortion which endangered woman population. Ministry of Health and Family welfare was concerned seeing such alarming as a result **Shantilal shah** committee was formulated in 1964 by government of India to make Abortion laws for India.

The recommendations of the committee were accepted as a result Medical Termination of Pregnancy bill was passed in Aug 1971.

Thus, Medical Termination of Pregnancy Act, 1971 came into force with following objectives.

- Ensure safer Abortions
- Termination of Pregnancy through registered Medical practitioner qualified under Indian medical Council Act.
- Was applicable to only married woman

Under section 3, the gestation limit was provided upto 12 weeks on the opinion on one service provider. However under section 4 the gestation limit of 20 weeks are provided not beyond that in any circumstances under the consultation of two service provider.

Allow minor 's Pregnancy Termination only with the consent of guardian
However, the incidents of abortion are not an absolute right of woman. The abortion is permissible only under following circumstances.

- When durability of gestation is a threat to the life of a Pregnant woman or could beget grave injury to her physical or internal health
- When there's substantial threat that the Child, if born or dead would be seriously handicapped due to physical or internal abnormalities
- When gestation is caused due to rape (presumed to beget grave injury to the internal health of the woman)
- When gestation is caused due to failure of contraceptives used by a wedded woman or her husband (presumed to constitute grave injury to internal health of the Woman).
- When the socio- profitable condition of the family is poor and the couple formerly has 2 – 3 children.

However, the MRTTP Act was undergone significant Amendment to improve in providing Abortion facilities and provisions to woman.

Amendment of 2002, remove the restriction of only to public clinics. Now the private clinics approved by district level committee were eligible for offering services.

Significant amendment came on 2021; The Medical Termination of Pregnancy Amendment Act of 2021 was passed on 16th march 2021 incorporated significant changes like –

- The medical facilitates for Abortion were now available to also on the grounds of contraceptives failure.
- Increasing the upper gestation limits from 20 weeks to 24 weeks for special categories of women which include survivors of

rape, Victim of incest and other vulnerable women like else – suitable women or minors etc.

- The constitution of medical boards in each State to decide and approved cases of termination.
- Increase confidentiality with related to details and identity of Pregnant Woman by medical practitioner or doctors.

Though, this amendment has brought some positive changes still 95 % women aren't aware of it. What's the meaning of having a law where still people are ignorant.

Thus, with the Era the laws and opportunities of Abortion to woman has significantly increased but till now the Abortion is considered a crime. It is the medical board and the judiciary which holds the power to decide whether a woman can perform Abortion or not.

II Landmark case laws

In August 2009, the Supreme Court observed Suchitra Srivastava & Another v. Chandigarh Administration case [2]

It was held that Article 21 of Indian constitution which guarantees right to life and personal liberty has a broader dimension which extends to which include liberty of women to make reproductive choices . These rights are the components of right to privacy, personal liberty , dignity and bodily integrity .

In the case of Justice puttuswamy and others vs. Union of India, it was held that Right to privacy is an intrinsic part of Article 21 of India Constitution that is right to life and personal liberty. Right is privacy is protected under Article 14, 19 and 21. Abortion comes under right to privacy.

IN the rarest case , the Calcutta High permit A 37 year old pregnant woman to under go abortion of 34 weeks pregnancy on the grounds of abnormalities in foetus suffering from severe ailment like weak spinal cord . This is the rarest case in India history where court allowed terminating pregnancy of 34 weeks. In February

2022, Uttarakhand allowed a minor girl of 16 years to terminate her pregnancy of 28 weeks.

X vs. Principal Secretary , Health and Family welfare , Government of NCT Delhi 2020 .

The Hon'ble Supreme Court held that unmarried women are entitled to safe and legal abortions . The court also noted that rape includes ' Marital Rape ' for the purpose of MTP Act . The arbitrary classification between married and unmarried woman this Act earlier created Discrimination against unmarried women and devoid them of this right .

III Challenges and disadvantages

1. A study was held in 2018 which revealed that 15.6 million abortions took place in India in 2015 [4] . A greater proportion of these are expected to be unsafe.
2. Unsafe abortion is the third largest cause of maternal mortality leading to death of 10 women each day and thousands more facing morbidities.
3. The MTP Act permits only gynecologist or approved medical practitioner to operate on woman . However according to a survey of NFHS in 2020 there is 70% lacking in the amount of gynecologist in rural areas .
4. The MTP Act do not provide for the termination of Pregnancy only on the will of women that's the reason due to which women choose illegal or unsafe measures to terminate pregnancy .
5. Forcing forced pregnancy may cause health impairment and disease to women .

IV Conclusion

Abortion is not just a natural or biological phenomenon. Today , it has emerged as a legal concept as a right to a woman . Right to take decision for her own body . Abortion is also a primarily human rights under Article 2 of universal Declaration of Human rights . Abortion are inclusive under Article 21 i.e. right to life and personal liberty . Thus , it is her personal liberty to decide that she want to give birth or not but do such human right also apply on the unborn is a controversial matter which needed to be

dealt by judiciary . We shouldn't forget that a woman is also a human being . She has right to her choices . She is not just limited to animal existence but it's her freedom to choice and right to take decision about her own body . However , still Abortion as a choice is not accepted fully . It is accepted in some special circumstances only in India which is an exception to the general rule . It is still considered a taboo in many rural areas . People don't considered to talk in public about it . It's a shame that though the world is processing but we are still struck with those arbitrary notions and ideas .

V Reference .

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