

LEGACY AND LEGALITY OF ABORTION: A COMPARATIVE STUDY

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ABSTRACT

In India, women are still subjected to discrimination, harassment, and exploitation, and are denied the right to life by killing the female embryo while it is still developing. This paper examines whether the statute prohibits courts from approving pregnancy termination after 24 weeks even when it is sufficiently established that the child would not be able to survive an extra-uterine life. It also looks at the risk that parents who choose to abort a foetus, if they learn that the foetus has a genetic mutation that could make the future child less than 'perfect', and the topic of sex selection, which is closely related to pregnancy termination. The study will also examine legal frameworks that either outright forbid abortion, have strict restrictions on it, or only allow it under specific conditions, such as when the mother's or the unborn child's lives are in danger. The study examines the dispute between pro-life and pro-choice advocates over the subject of abortion.

It looks at the social stigma associated with unmarried pregnancies, as well as the legality of such discrimination. It also explores how to empower women and whether restrictions on abortion pose a barrier. The Indian Penal Code of 1860 defines abortion as "Causing Miscarriage" and classifies it as a criminal act. The freedom to have an abortion must be treated with the same respect as other rights given to women in India, such as the freedom to conceive and bear children.

Keywords- India, Abortion, Discrimination, Harassment, and Exploitation, Freedom, Female embryo, pregnancy termination, extra-uterine life, Miscarriage

INTRODUCTION

This paper examines the moral questions surrounding abortions, such as whether the statute prohibits courts from approving pregnancy termination after 24 weeks even when it is sufficiently established that the child would not be able to survive an extra-uterine life. It also looks at the risk that parents who choose to abort a foetus, if they learn that the foetus has a genetic mutation that could make the future child less than 'perfect' even though it may be perfectly capable of extra-uterine independent existence, and the topic of sex selection, which is closely related to pregnancy termination. The study will also examine legal frameworks that either outright forbid abortion, have strict restrictions on it, or only allow it under specific

conditions, such as when the mother's or the unborn child's lives are in danger. The dispute between pro-life and pro-choice advocates over the subject of abortion will also be covered. The Indian Penal Code of 1860 defines abortion as "Causing Miscarriage" and classifies it as a criminal act.

It is up to each individual to decide whether or not a woman should be allowed to abort her kid and whether the right to an abortion falls under the purview of the right to life. The issue at hand is whether or not the right to an abortion falls under the purview of the right to life, which is protected by Article 21 of the Indian Constitution. It stands to reason that a woman who has been granted the right to life would likewise be entitled to the freedom to alter her body however she sees fit. John Stuart Mill argued that abortion is a self-centred action that should not be interfered with by a third party unless it causes harm to an external body or another party. Ronald Dworkin argued that the foetus experiences no pain at all in the early stages of pregnancy because it lacks interests or a conscience.

A scientific study claims that the foetal brain does not develop before twenty-six weeks of pregnancy. *Bhagwan Katariya and others Vs. State of M.P. 2000* was a case where the complainant's husband and other family members took offence when she became pregnant and took her for an abortion without getting her permission. The Medical Termination of Pregnancy Act, 1971 states that a doctor is allowed to end a pregnancy in certain situations, and if the pregnancy was ended by the law, it must be assumed that it could not have been done without the woman's consent. This case law demonstrates that a woman has an unalienable right to an abortion, which no one can deny her.

There are also circumstances where abortions are performed to protect the life of a foetus because continuing the pregnancy would be risky and could endanger the mother's life. The reasoning behind executing an abortion to save the woman's life is not that the foetus is viewed as having less value than the mother, but rather that both will die if no action is taken. If abortion is prohibited, a woman who does not want to carry the pregnancy would do so, give birth, and then abandon the baby, putting the baby's life in danger.

STATEMENT OF THE PROBLEM

India is still a country where men predominate. Many sex-selective abortions have been performed to produce more male offspring. We do have several rules that forbid female feticides, but they are not consistently enforced. Our sex ratio is declining as a result of a lack of implementation. Additionally, discrimination against girls must be endured throughout their entire existence. The right to equality is likewise violated by female feticide.

In India, there has been an increase in the number of cases and challenges involving medical abortion, including those that have gone all the way to the Supreme Court. Parents are now more aware of the potential physical and/or mental issues that the foetus may have to deal with thanks to advancements in science and technology. The right of the unborn child to be born is then weighed against the question of whether or not a pregnant woman should have complete autonomy over her body. In its current form, India's abortion law appears to be unable to address these intricate problems.

UNDERSTANDING FEMALE FOETICIDE

Before analysing the issues and challenges encountered, it is crucial to understand the current state of medical abortion in India as well as the context in which the law governing such circumstances was created. To put it another way, in order to comprehend the normative reality, it is necessary to look at the socio-political environment in which the law was enacted.

The Legislative process

Abortion was once seen as a morally repugnant act, but in the late 1960s there were 4.4 million abortions performed. The Indian Penal Code (IPC) viewed artificially terminating pregnancies as illegal, except when it was necessary to save the mother's life. The 'Medical Termination of Pregnancy Bill, 1969' was introduced to protect the unborn woman's life and prevent serious harm to her physical and emotional wellbeing. The government introduced the Bill in Rajya Sabha and reintroduced it in the Lok Sabha, making it a law. Three methods of ending a pregnancy are abortion, miscarriage, and premature labour.

INDIA'S LEGAL FRAMEWORK FOR ABORTION

The right to an abortion is a hotly contested issue in any society that predominates on earth. It has been denounced as the "great crime of the nineteenth century" in the United States, "demolishing one of the key pillars of our society" in the 19th century, and "demolishing one of the key pillars of our society" in the 20th century. Around the globe, approximately one third of women have undergone an abortion at some point, making it a very prevalent and necessary reproductive healthcare procedure. The difficult part of controlling abortion is an exercise in trying to find the balance between an ever-evolving level of medical pragmatism and the fluid spheres of moral, religious, and legal normative-ness that time and technology continually transfer. The courts have stated that the normative questions of when life truly begins, whose life is more valued, and the presumed "inviolability" of human life require intricate discussions of such a private nature that courts have left these individuals off their consideration list.

Women have persisted in controlling their reproduction through abortion for several generations, turning it into a topic for the Over the course of the twentieth century, demand for abortions has been a major issue in medical practice and law. Almost every country permits abortion at least under certain conditions, but only six nations worldwide entirely forbid it. Approximately 125 nations have certain limits

on abortion, usually allowing it only in rare instances due to socioeconomic reasons, risks to the woman's physical or mental health, or the incidence of terminal incongruities. In India, the right to an abortion and the right to a dignified existence and the exercise of free choice are guaranteed on the national level under Article 21 of the Indian Constitution. Up until 1971, the termination of pregnancy was illegal in India, as it constituted a crime under Section 312-316 of the Indian Penal Code of 1861.

Abortion can occur naturally or be forced, with a spontaneous abortion occurring when a pregnancy spontaneously terminates and an induced abortion occurring when the pregnancy is terminated by medicinal or therapeutic measures. The Shanti Lal Shah Committee relaxed the law in India to provide access to facilities for safe abortions in 1964. The Medical Termination of Pregnancy Act, 1971 (MTP Act) was passed in 1971, making inducing abortions legal in some circumstances. The current MTP Act was born in 1966 after the committee published its sanctions for legalising abortion. The ICPD and other comparable international conferences on population and development accords envision preserving procreative rights and advocating for the advancement of reproductive health services to prevent unexpected pregnancies.

PROVISION UNDER INDIAN PENAL CODE

(Before 1971)

The Indian Penal Code, 1860

The Indian Penal Code has made inducing a miscarriage a major offence. Section 312 of the Code states that a person who purposefully induces a miscarriage in a pregnant woman is subject to a prison term of three years, a penalty, or any combination of the two. Section 313 of the Code will control how the matter is handled if the woman is not the willing party. The ruling has been criticised for two reasons. The IPC's Section 313 makes it illegal to cause a miscarriage without the mother's consent.

Section 314 punishes the accused if they intend to induce a miscarriage but kill the pregnant woman. Section 315 punishes actions taken with the intention of "causing the child to die after birth or preventing the child from being born alive". Segment 316 makes the death of a child who was born quickly punishable as homicide, even if it was not intended to kill the foetus.

PROVISION UNDER MTP ACT,1971

(Post 1971)

The Medical Termination of Pregnancy, 1971

The Medical Termination of Pregnancy Act (MTPA) was passed in 1971 to allow for the termination of pregnancies up to 20 weeks of gestation by a listed medical expert with a doctor's full consent. The 1975 Medical Termination of Pregnancy Rules and Regulations set forth the requirements and steps for authorising an abortion capability, as well as safeguards for consent, record-keeping, reporting, and discretion. To end a pregnancy, the expectant mother must consent and her caretaker must give written

consent. A district-level committee established by the government must have a minimum of three and a maximum of five members.

ABORTION LAW REFORM SINCE 2000

The new guidelines for abortion facilities have been moved from state-level commissions to district-level commissions to reduce administrative burden and provide disciplinary measures. The Supreme Court ruled that a woman's right to personal liberty is protected by the constitution and pregnancy termination is only allowed when all requirements have been met. The criteria and process for approving an abortion facility are defined in the MTP Rules and Regulations 1975.

The Medical Termination of Pregnancy (Amendment) Bill, 2014

The MTP (Amendment) Bill proposed by the Ministry of Health and Family Welfare in 2014 would have raised the legal abortion cutoff point from 20 to 24 weeks and no restrictions for pregnancies with major terminal defects. It also broadened the range of medical facility employees by including non-allopathic health care workers. However, it does not address the predicament of those who have committed sexual crimes, leaving them vulnerable to the same issues as an unintended pregnancy.

TRENDS IN ABORTIONS AS OF 2020: INDIA

The Medical Termination of Pregnancy (Amendment) Bill, 2020 has been approved by the Union cabinet and will increase the maximum gestational period from 20 to 24 weeks. It also allows Ayurvedic, Unani, and Sid physicians to carry out abortions, but only through medical procedures. The amendment is a significant move for India in support of reproductive rights for women, allowing them to be in charge of their bodies without interference from the government.

ROE VS. WADE: A DEFINING ERA FOR THE AMERICAN WOMEN

Roe v. Wade was a pivotal case that paved the way for the legalisation of abortion across the US, and was brought in secret by Jane Roe. It marked the first time an American court recognised the statutory or constitutional right to discretion. Roe v. Wade established a precedent that would affect more than 30 other supreme court rulings, but opposition to it was also on the rise. The National Right to Life Committee began operations to overturn Roe v. Wade. The battle between pro-life and pro-choice factions has become increasingly fierce since 1973, with both sides advocating for a "litmus test" for reasonableness claims.

TRENDS IN ABORTIONS AS OF 2020: USA

The Roe v. Wade case, which legalised abortion nationwide in the late 1970s, will be celebrated on its 47th anniversary in 2020. The United States experienced an unprecedented rise in restrictive anti-abortion laws in 2019, some of which are blatantly unlawful. Senior feminists fear that since Roe, abortion rights are now taken for granted and doctors are worried about the potential resurgence of illegal and deadly methods for getting abortions. The failure of a doctor to attempt to "re-implant" an ectopic pregnancy would have resulted in charges of "abortion murder". These laws conflict with Roe v. Wade, and abortion opponents hope to pressure the Supreme Court into overturning Roe.

This March, the Supreme Court heard oral arguments in *June Medical Services LLC v. Russo*. The June Medical decision on a "targeted regulation of abortion providers" (TRAP bill) may jeopardise or protect the well-being and financial security of residents of Louisiana and its nearby areas. Legal experts are in disbelief that the supreme court is considering this issue, as it found a Texas law to be unconstitutional and an unjustified obstacle for women seeking abortions. This is a distressing and dangerous period for women all across the world.

ABORTION IN THE UK

Abortion is de facto legal in the UK thanks to the Abortion Act of 1967 and the Abortion (Northern Ireland) (No. 2) Regulations of 2020. Approximately 10 million abortions have been carried out in the UK, with the most common justification being "risk to woman's mental health". In England, Scotland, and Wales, abortion is permitted when there is a significant risk of the unborn child suffering from physical or mental abnormalities. Northern Ireland's abortion laws permit abortions for any reason during the first 12 weeks of pregnancy. Under UK devolution, abortion policy is not devolved to the Welsh Parliament, but is devolved to the Scottish Parliament and the Northern Ireland Assembly. It is still unlawful to have an abortion for a reason other than what is permitted by law.

A COMPARATIVE ANALYSIS

The abortion laws in the US and UK are more centred on women, with the state's role as a mother's and unborn child's protector taking precedence over the expectant mother's right to personal freedom and privacy. In India, abortion is not seen as a "right" and can only be sanctioned when the woman's health is seriously in danger. Target categories include those who prefer the male child over the female, innocent youths, sexual providers, and victims of rape. The most important details are that if the mother is reluctant to accept the child, it will put additional strain on her mental or physical health, and that the UK's health department may legalise more abortions to safeguard a woman's mental and physical health. In India, women's rights to life, personal liberty, dignity, and privacy are being invaded by laws created in India.

Even if legalising abortion would result in abuse of the law, it is much simpler to end the life of an unborn kid than to sabotage their life once they are born.

RECOMMENDATIONS REGARDING THE UPPER LIMIT CRITERIA

This Amendment Bill makes abortion a right of the pregnant woman up to 12 weeks, but it is not enough. The upper limit of gestation for the termination of pregnancy is set by municipal systems based on viability of the foetus and safety of the pregnant woman. The recommendation is that abortion should be made "available on demand" up to a certain upper limit in the second trimester and upon request for reasons to be recorded in writing by the provider. The doctor-oriented approach manifested in the MTP Act should be morphed into a woman-oriented approach.

SUGGESTIONS

The most important details in this text are the suggestions to combat female foeticide. These include enacting proper laws, providing security for parents, and granting financial aid to the girl child. Corporate initiatives such as "Beti Ek Anmol Ratan" and "LADLI" have been successful in changing the mind-set of the society. Awareness programmes should be launched to make women aware of their rights and about the ill effects of abortions. Free and compulsory education should be provided to female children, the Dowry Prohibition Act should be made more stringent, medical termination of pregnancy should only be permitted after approval of PNDDT authority/committee/gazetted female officer/Mahila Panchayat members/NGOs, and the foetus should enjoy distinct legal rights from conception.

The British Parliament passed the Congenital Disabilities (Liability) Act, 1976 and the Nuclear Installation Act of 1965 to protect the rights of unborn children. The Indian Parliament should enact laws to ensure healthy growth and safe birth of an unborn child. Village level committees should be set up to watch pregnant women, and social awareness should be created that girls can grow up to be as good as boys. Medical professionals should counsel their patients and their families on the importance of the girl child and the impact of the skewed sex ratio on society. A crusade against female foeticide should be declared to stop the elimination of daughters only because of their sex.

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