

# Abortion law in India Vis-à-vis Women's Reproductive Rights

Praveen Choudhary

Department of Law

Vivekananda Global University, Jaipur

Email ID: registrar@vgu.ac.in

**ABSTRACT:** *Abortion is a procedure by which an embryo or fetus is killed prior to its full term. It is done with the medical ramifications and disabilities related to it in mind. A miscarriage is known as an abortion that happens without any interference or involvement. There are different causes connected with miscarriages. When highly trained medical experts and practitioners take manual steps and manual action, the procedure is known as induced abortion. If it is performed by a qualified medical specialist, abortion is a secure procedure per se. If we look at the conventional reasons for or against abortion, we find that each is motivated by the theological essence of conflict and legislation. Two words should summarize this conflict: Pro-Choice and Pro-Life. Someone who is Pro-Choice feels that everyone has the moral right to decide whether to have kids and not to. They presume that people have total autonomy with regard to their bodies. The practice of abortion is rejected by someone who is Pro-Life. They agree that all human beings have a right to live, including the unborn. They are much less concerned about the life of a woman who, after birth, has an accidental pregnancy or child protection. Women and their right to decide their identity, fertility and reproduction are considerations seldom, if ever, taken into account in the formulation of abortion-related policies. For the woman concerned, the right to undergo an abortion is a question of individual conscious choice. For women to possess complete independence and personality, power of their own bodies and the reproductive process is necessary.*

**KEYWORDS:** *Abortion; Embryo; Miscarriages; Reproductive and Right to decide.*

## INTRODUCTION

As it is referred to in legal parlance, abortion or termination of pregnancy was illegal in India until 1971, as Section 312-316 of the Indian Penal Code, 1861 made it a criminal offense. Abortion may be induced or spontaneous. When a pregnancy comes to an end on its own, spontaneous abortion is generally known as miscarriage; and when a pregnancy is terminated by intervention using medical or surgical procedures, an induced abortion is. It is obvious that induced abortions were made illegal by the Indian penal code, given the socio-religious fabric of Indian society at that time [1]. In 1971, however, the Surgical Termination of Pregnancy Act, 1971 (MTP Act) was passed, in some cases, making induced abortion legal. Based on the recommendations of the Shanti Lal Shah Committee, formed by the government in 1964, this Act was enacted to draft abortion legislation for India in response to the alarming rates of illegal abortions occurring in the country [2].

There has been discomfort and unrest over its provisions giving preference to the opinion of a licensed medical practitioner rather than the pregnant woman since the MTP Act was adopted. So far, several petitions have been filed challenging the 48-year-old MTP Act, 1971 because of its strict abortion-related provisions. Since 2009, more than 30 petitions have been filed by women and girls to the Supreme Court and the High Court's seeking clarification on the termination of pregnancy.

The Ministry of Health and Family Welfare recently submitted, on September 18, 2019, in an affidavit filed before the Supreme Court of India, that the right to abortion of a pregnant woman is not absolute. The affidavit was lodged in response to Dr Nikhil Datar's 2009 petition seeking to liberalize restrictive laws relating to abortion in India [3].

This government response has resurfaced the debate on women's right to make reproductive choices.

With the laudable goal of protecting the health of women and reducing maternal mortality due to illegal abortions, the MTP Act was passed. However, even after 48 years of abortion, unsafe abortions make up 9-20% of all maternal deaths in India. A recent report published in Lancet Global Health reports that only 22% of the 15 million abortions that occur each year in India take place in a public or private health facility and are carried out by qualified workers, while the remaining 78% of abortions occur outside health facilities. These harrowing statistics show that the current legislation has been incapable of fulfilling its goal and calls for prompt

amendment. It is imperative to understand the law governing the realm of abortion in India to argue for reform in the laws[4].

### *Legal Development concerning law related to the Abortion*

From its very inception under the British regime, the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1898, made abortion a criminal offense for both the woman and the abortionist, except to save the woman's life. European and American countries began to legalize abortion after the Roe V. Wade case, where it was held that the pregnant woman had a right to choose to have an abortion without undue government intervention. A thorough study of socio-cultural, legal and medical aspects of abortion was undertaken by the Shah Committee, formed by the government in 1964, and recommended legalization of abortion in 1966 to avoid waste of women's health and lives on both humane and medical grounds[5]. The government passed the Medical Termination of Pregnancy Act of 1971 on the basis of the committee's findings (MTP Act of 1971).

#### (i) Medical Termination of Pregnancy Act, 1971 (MTP ACT)

This Act consists of 8 sections that deal with different aspects, such as the place, time and circumstances in which a registered medical practitioner can terminate. The MTP Act provides a registered medical practitioner with full protection against any suit for any harm caused to a woman seeking abortion in good faith. It also allows for the termination of pregnancy if the duration of pregnancy does not exceed 12 weeks, after approval by a registered medical practitioner and if the duration of pregnancy exceeds 12 weeks but does not exceed 20 weeks, after approval by two registered medical practitioners[6].

The grounds for termination include the risk of life or serious injury to the physical or mental health of a pregnant woman, or there is a substantial risk of physical or mental abnormality or pregnancy occurring if the child is born as a result of a married woman's lack of contraception, or if pregnancy occurs as a result of any sexual crime, such as rape.

It has also been stated that no termination of pregnancy shall take place at any location other than a government hospital or a government-approved location. To eliminate the time-consuming process and make it more flexible and make abortion services readily accessible to all, the MTP Act has been revised many times. However, amid social changes and technical development, the MTP Act 1971 is now obsolete. In 2015, India reported 15.6 million abortions, according to a study published in Lancet Global Health, of which 78 percent of total abortions occurred outside health facilities, 48 percent were accidental, and 0.8 million women used unsafe abortion practices, placing their health and lives at risk. There are different explanations for unsafe abortions, such as stigma, privacy, lack of knowledge, anonymity, lack of service availability, etc.

#### (ii) Medical Termination of Pregnancy Amendment Bill, 2020

The Union cabinet approved the Medical Termination of Pregnancy (Amendment) Bill in January 2020, making it easier for women to terminate their pregnancy safely and lawfully. It increases the allowable gestation period to 24 weeks, provided that two medical practitioners are needed to be licensed. This is achieved with rape survivors, incest victims and other marginalized women such as minors, individuals with various abilities, etc. in mind. In the case of contraceptive failure, the amendment also allowed all women, and not just married ones, to obtain abortion[7].

In addition to that, in cases of severe fetal anomalies diagnosed by the Medical Board, the upper gestation limit will not be extended. This addresses the mortality and morbidity of mothers resulting from unsafe abortion. Women will also be spared the agony of seeking permission from the court as there are many instances in which women concerned do not realize that they are pregnant in the first five months and time runs out on them. The bill also emphasized the confidentiality of all women who are ending their pregnancy.

This is a great move for a nation like India, where abortion is still linked to social stigma and is seen as a taboo, ensuring women's dignity, autonomy, confidentiality, and justice. India will now be one of the countries with a highly progressive law permitting legal abortions for a wide range of therapeutic, humanitarian and social reasons.

*Judicial pronouncement related to the abortion in India*

The judiciary has also been active in pronouncing progressive judgments on this sensitive issue of abortion, in addition to the various acts and legislation. Some of the landmark cases were listed:

- (i) Suchita Srivastava and V. Krishnanan[8]: The Supreme Court ruled in that landmark judgment that the decision to continue pregnancy and the qualified consent to abort the fetus were linked to the right of women to life and personal liberty guaranteed by Article 21 of the Constitution. The reproductive choices of a woman are safeguarded under Article 21. This is consistent with seeking to protect the privacy, dignity, and bodily integrity of a woman.
- (ii) Ms. X V. State of Kerala[9]: In this case, the woman was subjected to rape. The man she had sex with had promised to marry her, but then withdrew from his promise. She became pregnant with her child, so she decided to get an abortion. The hospital authorities, however, told her that she was 24 weeks pregnant and that, according to the MTP Act, abortion would take place within 20 weeks of pregnancy. According to Article 226 of the Indian Constitution, she then lodged a written petition. As she was not psychologically prepared to be discarded by the man under the pretext of marrying her, the high court ruled that delivering the child would lead to mental and emotional stress on the woman, which could alter the entire course of her life. Thus, under Section 5 of the MTP Act, the court ruled that such a case should be treated as an exception, thus enabling the woman to medically terminate her pregnancy.
- (iii) Mrs.X V. Union of India and Ors.[10]: The applicant was, in this case, 22 weeks pregnant. A disorder called bilateral renal agenesis and hydramnios was diagnosed with her fetus during the 22nd week. Bilateral renal agenesis indicates that there are no kidneys in the fetus and hydramnios suggest that there is no amniotic fluid in the womb. The team of doctors noted that there is a possibility of the fetus dying inside the womb of the mother if the pregnancy is continued. Such a death is called intrauterine fetal death in medical terms. In addition, the doctors reported that the chances of the child surviving for a long time are also negligible even if the pregnancy continues and the child is born. The issue found by the doctors is that, for bilateral renal agenesis, no curative therapy is currently available. The fetus will suffer from pulmonary hypoplasia due to the prolonged absence of amniotic fluid, leading to serious birth respiratory failure, which makes the fetus incompatible with extra-uterine life, i.e. outside the uterus. There is also a risk to the mother as her physical and mental health can be threatened by the continuation of pregnancy and the child's birth can risk her life as well. The court ruled that she should be allowed to medically terminate her pregnancy under these conditions, in accordance with the woman's bodily integrity.

**CONCLUSION**

In conclusion, therefore, while India's abortion laws are indeed intended to help emancipate its women-folk, some significant folly suffers from its implementation and substantive elements. To bring it into line with new technologies and medical practices, there is a need to amend the MTP Act. To do away with their dispute with the MTP Act, there is also a need to amend the POCSO Act. The medical and legal system of India needs development, too. Therefore, it is important for government and civil society elements to come together and strengthen the substantive and implementation components of the abortion laws and policies of India.

The decision not to give birth to a child is a mother's decision. Pregnancy is not simply rising, but it requires a lot of feelings. In any event, if a woman settles on the difficult decision to end her pregnancy, she should not be left defenseless by anyone against any kind of pressure. The tough provisions of the MTP Act are intertwined with women's legal rights. The Supreme Court of India has strongly perceived that the choice to decide on regenerative decisions is a portion of women's individual rights.

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