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Termination Of Pregnancy

“Abortion is profoundly anti-women. Three-quarters of its victims are women: half the babies and half the mothers. Any country that accepts abortion is not teaching its people to love but to use violence to get what they want. This is why the greatest destroyer of love is abortion.” - Mother Teresa¹.

Introduction

In 2024, it would be reasonable to state that we all live in a world of social networks, with Facebook, Twitter sites, and all the rest, and that is okay. Taking into account the state of affairs at the moment, it should not be incorrect to assume that everyone is aware of the notion of "abortion" by this point. Abortion is a hotly debated topic, but it lacks the venomous bite of crusading killing. Ultimately, the question is whether it is permissible to kill a fetus and when the medical profession should intervene to relieve a pregnant woman of her unwanted pregnancy. Many readers would like to shed light on how abortion and infanticide were common practices in biblical times. The debate over abortion is full of ethical controversies. Several views and approaches give rise to practical issues beyond extremism. The issue of

¹ Mother Teresa, Notable and Quotable, Wall Street Journal, 25th February 1994

abortion is frequently presented as involving conflict between the moral interests of the unborn child and those of a pregnant woman.

There can never be a conflict since nobody knows whether a fetus has moral value or status in the sense of being entitled to protection obligations. This is yet another hotly contested question. Judith Jarvis Thomson's most famous and influential article attempted to avoid the need to settle whether and to what extent the fetus has moral status. He argued that even if a fetus is considered to have a moral status equivalent to that of a human adult, a woman is under no obligation to carry the fetus that is growing inside of her if she has no ultimate goal of enduring the relationship with the biological father under any circumstances. A woman can choose to acknowledge a morally significant disanalogy between the two situations, believe that there is a duty in both situations—that is, that it is wrong to terminate the pregnancy or break off contact with the biological father—or accept that there is no duty in either situation². The option that garnered the greatest amount of support was the third one that Thomson presented. Some analysts cling to the concept of guilt, emphasizing that, outside of rape situations, a woman who is pregnant has willingly assumed the risk of becoming pregnant by engaging in sexual activity. Being pregnant can result from deliberate action, but it can also be the product of carelessness or bad luck.

Judge Harry A. Blackmun acknowledged that forced pregnancy prolongation puts many things at risk, including physical and mental health, financial burdens, and social stigma. *Roe v. Wade*: This 1973 lawsuit is well-known for resulting in the Supreme Court's ruling that unduly restrictive state regulation of abortion is unconstitutional³. The Supreme Court established its decision that the US Constitution provides a fundamental "right to privacy" that protects a person's right to choose whether to have an abortion and that the abortion right is not absolute.

² Judith Jarvis Thomson, 1971: A Defense of Abortion

³ *Roe v Wade*(22nd January, 1973);Supreme Court of United States

It must be weighed against the government's goal of safeguarding fetal health and life. Conversely, Dr. B. Sandeepa Bhatt argues that the Roe v. Wade decision is to blame for the deformity of a great nation such as the United States; mothers are now against their children and women are against men because of the so-called right to an abortion⁴; it has shown how conflict and violence are fundamental to even the closest human relationships; and it may be argued that the decision diminished the role of the father in a society where the number of fatherless families is on the rise. Human rights are not an official government privilege; they are each person's entitlement under the covenant of humanity. No one's right to life can be said to be dependent on the whims of any other person, not even a parent or a sovereign.

However, what we must comprehend is that we do not prove that the fetus has the same legal standing as its mother. Feticide is not a crime, and the fetus only receives complete protection from criminal and civil laws at the time of birth. Abortion is more than a woman's choice, and laws prohibiting abortion cannot be defended on the grounds that they protect the moral interests of other people⁵.

An Overview of the Indian Legal Position on Abortion

The term 'abortion' is derived from the Latin word 'aboriri', which means "to get detached from the proper site."⁶ In medical usage, 'abortion' refers to the termination of pregnancy before the period of viability or the expulsion or extraction of all or any part of the placenta or membranes without an identifiable fetus.

⁴ Reflections on Medical Law and Ethics in India (Editor: Dr. B Sandeepa Bhatt)

⁵ Medical Law and Ethics: Shaun D Pattinson(4th edition);Sweet and Maxwell, South Asian Edition 2017.

⁶ Rajesh Bardale, Principles of Forensic Medicine & Toxicology p. 345

One such instance is abortion, where two important rights—the pregnant woman's and the unborn child's—are at odds and require careful balancing between their competing interests.⁷ Preserving this delicate balance and preventing the exploitation of one right by another is the aim of the law.

I. Legal regulation of abortion is a double-edged sword.

Due to the many socio-ethical aspects of abortion, legislative bodies around the world have found it difficult to distinguish between legitimate cases and frivolous requests for abortions. For example, while cases involving rape victims and complicated pregnancies legitimately call for abortions, cases involving sex detection and female foeticide require condemnation by the law. Additionally, valid consent from the pregnant woman—and frequently from her husband or other family members—to terminate a pregnancy is another area where the law is challenged. Above all, it's critical to keep in mind that overly restrictive laws surrounding abortion endanger the health and lives of expectant mothers.⁸ Statistics show that more than half of the 44 million induced abortions carried out globally each year are illegal, carried out by unskilled, inexperienced doctors, and performed in appallingly filthy settings. Since 98% of unsafe abortions occur in underdeveloped nations, such as India, the issue is particularly concerning there.⁹ As a result, abortion laws are a double-edged sword: they can balance rights if done correctly, but they may also cause chaos if done incorrectly.

II. Background check on the Indian legal position.

⁷ Legal Regulations of Abortion in India, Dr. B Sandeepa Bhatt p.60

⁸ P. 61, Dr. B. Sandeepa Bhatt

⁹ www.gutmacher.org

Even after *Roe v. Wade*¹⁰ was decided forty years ago, America is still facing difficult decisions and struggles to strike a fair balance between pro-life and pro-choice viewpoints.¹¹ Over the years, India has not shown signs of such intense controversies. Prior to the *Roe v. Wade* ruling, India had approved the Medical Termination of Pregnancy Act of 1971.¹² However, it was noted that the legislation was quietly passed with little protest from the political or religious communities.¹³ This was likely because India was already dealing with serious issues, such as an uncontrollably growing population and the termination of unwanted pregnancies by unfit individuals.

Relieved that the MTP Act reduces the birth rate while also protecting expectant mothers' health by allowing them to have abortions performed by licensed medical professionals. Consequently, the context of Indian abortion law is different from that of US abortion law. That being said, women's reproductive rights and privacy are still significant in India.

III. Relevance of the Constitution of India and the Indian Penal Code.

Before exploring the MTP Act's specifics, it is important to comprehend the sections that address the contentious issue.

¹⁰ [1973]410 US 113. The United States' Supreme Court struck down the Texas criminal abortion laws and developed its own trimester theory to allow abortion. It mentioned that until the end of first trimester, the abortion decision and its implementation must be left to the medical judgment of the physician attending the pregnant woman. Subsequent to the end of first trimester, the State may regulate the abortion procedures to promote the maternal health of the pregnant woman. Finally, subsequent to the viability, State may regulate the abortion to preserve human life, except in the cases where the abortion is necessary to preserve the life or health of the pregnant woman.

¹¹ Post *Roe v Wade*, the United States witnessed a tug of war between the personal liberty activists and prolife activists. This has resulted in bringing in many laws to regulate abortion; some of them being struck down and others being upheld by the American judiciary.

¹² [1973] 410 US 113.

¹³ Paige Passano, Legal but Not Available: The Paradox of Abortion In India.

A multitude of rights are interpreted to be contained in Article 21 of the Indian Constitution¹⁴, which talks about each person's fundamental right to life and personal liberty. The "life" that Article 21 envisions is not only an animal existence but rather the ability to live with dignity. The Supreme Court prominently noted in *Air India v. Nargesh Mirza*¹⁵ that the right to femininity is a component of the right to life and personal liberty under Article 21. As a result, any restriction on a woman's ability to become a mother or have an abortion would be a violation of Article 21.

The Indian Penal Code (IPC) was drafted in the colonial era, and Section 312 penalizes people who induce miscarriages in pregnant women unless they act in good faith to preserve the life of the expectant mother. This law partly reflects the ancient Christian idea of the fetal right to be born without being aborted. For inducing a miscarriage without the pregnant woman's agreement, Section 313 of the Indian Penal Code stipulates heightened punishments, which include life imprisonment or a sentence of up to ten years in prison, along with a fine. When a pregnant woman dies while performing an act intended to cause miscarriage, she is subject to punishment under Section 314 of the IPC, which includes a fine and up to ten years in prison. If the act is performed without the woman's consent and results in her death, she faces life in prison or a term that may include up to ten years in prison. Additionally, the clause states that the offender need not have known that his actions would cause this particular type of death for the court to find him guilty. It follows that the offender will still face the penalties outlined in this section even if no steps are taken to induce the miscarriage and the woman dies unintentionally.

¹⁴ No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹⁵ AIR 1981 SC 1829; (1982)1 SCR 438

IV. The Medical Termination of Pregnancy Act, 1971.

Pregnant women are shielded against inexperienced and untrained, unlicensed medical practitioners under the MTP Act. In 2002, the Act underwent an amendment that increased the penalty for pregnancy abortion to a strict prison sentence. In the Indian Supreme Court case of *Surendra Chauhan v. State of M.P.*, a 24-year-old girl died after Dr. Ravindra Kumar Sharma conducted an abortion. The family filed a lawsuit, which resulted in the Indian Penal Code finding Chauhan and Sharma guilty.

Case Laws under various provisions of the MTP Act, 1971

A) Timeframe and Grounds for Termination:

In *Jamana Suthar v. State of Rajasthan*,¹⁶ the Rajasthan High Court decided that cases where the twenty-week period after conception has passed do not fall within the liberal approach to rape cases. In one case, a married minor claimed to have been abducted, raped and then asked to have her pregnancy terminated. After reviewing the case, the Medical Board concluded that a woman's life may be in danger if her pregnancy is terminated before 20 weeks and that such a termination can only be performed based on therapeutic consideration for the mother. The State Government was mandated to provide the necessary care by the court, which dismissed the plea.

B) Consent for Termination:

¹⁶ S.B. Civil Writ Petition No. 6683/2009.

In the Supreme Court case *Suchita Srivastava v. Chandigarh Administration*,¹⁷ a mentally handicapped woman who was a welfare facility inmate was accused of being raped. The Chandigarh Administration requested permission to end the pregnancy, claiming the mother's mental instability and incapacity to care for the child. An expert body appointed by the High Court concluded that the woman's desire to carry on the pregnancy was erratic. The victim was not able to comprehend the implications of the pregnancy, so the High Court decided that the pregnancy could end. The Supreme Court overturned the ruling, holding that the expectant mother's right to choose should be honoured. While the husband's consent is not necessary to end a pregnancy, the Hindu Marriage Act of 1955 recognizes it as a legitimate reason for divorce if it is not obtained.

C) Site of Termination:

As specifically mentioned in Section 4, pregnancy terminations are only allowed in facilities established or maintained by the MTP Act of 1971. This ensures that the pregnant woman is not put in danger and that the right conditions and hygiene are maintained. Section 4 mandates that such locations receive approval.

According to the MTP Act of 1971, abortions in the first trimester up to 12 weeks of pregnancy must be approved and must include a gynecological examination, medications, resuscitation and sterilization equipment, and parental fluid. Emergency medications, an operating table, and anesthesia supplies are needed for the first 20 weeks of the second trimester. When prescribed by a registered medical practitioner, RU-486¹⁸ with Misoprostol can be used for abortions

¹⁷ (2009)9 SCC 1

¹⁸ RU-486 eliminates the element of human skill involved in an abortion and avoids surgical intervention. The abortion "pill" is actually two pills, taken on two different days. The first tablet, RU-486 or Mifepristone, acts by blocking progesterone, a hormone essential in pregnancy, and hence kills the foetus. The second pill, Misoprostol, is taken three days later. This causes uterine contractions that expel the foetus.

for up to seven weeks as long as the patient has access to an approved facility and a visible certificate.¹⁹

Exception: According to Section 5(1) of the MTP Act 1971, doctors may end a pregnancy in good faith even after twenty weeks of pregnancy and without the consent of two licensed medical professionals if doing so is urgently necessary to save the pregnant woman's life.

Conclusion:

Socioeconomic factors, especially those that emerged after independence, have an impact on Indian views on abortion. Despite social attitudes against it, abortion has become legal due to the expanding population and poverty. There are operational restrictions on the MTP Act, which attempts to regulate population growth and safeguard expectant mothers. Modern technology makes it possible to end a relationship without suffering serious consequences, even after twenty weeks. Concerns concerning abortion rights and consent are at the centre of the ongoing discussion between ethical principles and scientific facts. If a married woman wants to exercise her right to sexual autonomy, her husband's approval might not always be obtained.

¹⁹ Rule 5(1), MTP Rules 2003.

