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LIBERALISATION OF MEDICAL TERMINATION OF PREGNANCY IN INDIA

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ABSTRACT

Women have always been struggling for reproductive rights. These rights continue to be a topic of contention even in this era and they are to be looked upon very prudently due to its connection with the religion, morality and ethics.

Now the question that arise is -

- What are these reproductive rights?
- Is it only concerned about the right to give birth or is it way more than that?
- Do they have the right to decide when and how many children to have?
- Do they have the right to abortion?
- Do they have the access to birth control methods?
- **Do women really have control over their reproduction?**

The answer may have been “No” which led to the struggle for their rights all over the country and the world as well. Despite the improving conditions of women in India, they still lack the access to safe abortions.

This article reviews the history of abortion laws and the amendments and regulations made in India in favour of women for their welfare and upliftment.

INTRODUCTION

“There is no freedom, no equality, no full human dignity and personhood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the woman concerned.”

-Betty Friedan

Previously, abortion was strongly prohibited in the society as it was seen as the murder of the foetus and was considered to be morally and ethically wrong and not acceptable by the religious communities. But with the changing phase of time and technological developments several countries have liberalised their laws and made abortion legal.

Abortion which was once opposed legally and religiously appears to be one of the most necessary requirements for female emancipation. It is a woman's individual right, her right to life, her right to liberty that sanctions her right to have an abortion.

WHAT IS ABORTION?

Abortion is the expulsion of a foetus or embryo from the uterus before it has reached the stage of viability which means before 20 weeks of gestation.

It may occur spontaneously known as miscarriage or can be done artificially known as Induced Abortion through surgical and chemical methods.

ABORTION LAWS IN INDIA

Prior to the Medical Pregnancy Act of 1971, abortion in India was criminalised under Section 312 of the Indian Penal Code.¹ This section of IPC punishes whoever causes an women to miscarry her child other than done in good faith. This section is also applicable for the women herself.

With the increasing number of abortion cases the Central Family Planning Board in 1964 expressed their anxiety which kept the Ministry of Health and Family Welfare on alert. To deal with this crisis The Government of India formed a committee which was led by Shantilal Shah in 1964 to examine the question of legalisation of abortion and come up with the suggestions to draft an Abortion Law in India.²

KEY HIGHLIGHTS OF THE SHAH COMMITTEE

- The committee studied the socio-cultural, legal and medical aspects of abortion.
- The committee to prevent risk on women's health and lives recommended legalisation of abortion in India.

¹ Indian Kanoon, Indian Penal Code, 1860

<https://indiankanoon.org/doc/1990693/>

² https://jogi.co.in/articles/files/filebase/Archives/1975/oct/1975_588_592_Oct.pdf

- According to the report, in a country with the population of 500 million people, the number of abortions per year will be 2.6 million to 6.5 million natural and 3.9 million induced.

On the basis of the report the government passed the Medical Termination of pregnancy Act, 1971 which liberalised the abortion laws of India.

MEDICAL TERMINATION OF PREGNANCY ACT 1971

The MTP Act 1971 is a law that legalised abortion in India up to 20 weeks of pregnancy by a registered Medical Practitioner at a registered medical clinic under certain conditions –

- If the continuation of pregnancy would risk the life of the pregnant women,
- If the pregnancy causes grave injury to her physical and mental health,
- If the child born would be seriously handicapped or mentally challenged,
- If there is a failure in the device used by the women and husband to control the number of children,
- If the pregnancy is caused by rape.

Termination of pregnancy within 12 weeks can be done without providing any reason whereas termination of pregnancy within 20 weeks has to get a certificate and recommendation by 2 registered medical practitioners. The act does not permit termination of pregnancy after 20 weeks.³

MTP ACT, 1971 AMENDMENT 2002⁴

The MTP Act was amended in 2002 for better implementation of act access for women in private health sectors.

Key Features -

- The word ‘lunatic’ from act was substituted by ‘mentally ill person’

³ MTP ACT 1971 <http://tcw.nic.in/Acts/MTP-Act-1971.pdf>

⁴ MTP Amendment 2002 <https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-amendment-2002>

- They decentralised the process of approval of a private place to offer abortion services to the district level.
- For the safety of women, strict penalties were introduced for termination of pregnancies being conducted in illegal sites or by untrained medical practitioners.

MTP ACT, 1971 AMENDMENT 2014⁵

The MTP Act was amended again in 2014 which proposes changes that could initiate a shift in focus of the Indian abortion discourse from healthcare providers to women.

Key Features -

- Expanding the availability of safe and legal abortion services,
- Provisions to increase the gestational limit for seeking abortion on grounds of foetal abnormalities beyond 20 weeks.
- Increasing access to legal abortion services for women by liberalising the law,
- Extending the indication of contraception to include unmarried women,
- To increase the clarity of the Medical termination of pregnancy Act.

MTP AMENDMENT BILL 2020⁶

The MTP amendment bill was passed by the Lok Sabha which seeks to extend the termination of pregnancy period from 20 weeks to 24 weeks. It aims to expand women's access to safe and legal abortion especially cases involving victims of incest, rape survivors, minor girls, differently-abled girls or in case of pregnancy that has substantial foetus abnormalities.

Key Features -

- Requirement of opinion of one Registered Medical Practitioner (RMP) for termination of pregnancy up to 20 weeks of gestation,

⁵MTP AMENDMENT 2014

<https://www.prsindia.org/uploads/media/draft/Draft%20Medical%20Termination%20of%20Pregnancy%20Amendment%20Bill%202014.pdf>

⁶ MPT Amendment Bill 2020 <https://www.manifestias.com/2020/02/11/mtp-amendment-bill-2020/>

- Requirement of opinion of two Registered Medical Practitioner for termination of pregnancy of 20 – 24 weeks,
- Enhanced the gestation limit for ‘special categories of women’ which includes survivors of rape, victims of incest and other vulnerable women like differently-abled and minors.
- Name and other personal details of the women whose pregnancy has been terminated shall not be revealed other than to the person authorised by law.

CASE LAWS IN THIS REGARD

- In 1996, an unmarried girl of 18 years pleaded for an order of direction to terminate the pregnancy of her child on the ground that the pregnancy led to mental illness and the continuance may cause great anguish in her mind which would result in grave injury to her mental health, as the pregnancy was caused by rape. The court granted the permission to terminate the pregnancy.⁷
- In February 2016. An 18 year old rape victim pleaded to the Gujarat High Court to abort her 24 weeks foetus after having unsuccessfully attempted suicide by consuming acid. The High Court granted permission to abort the foetus after considering with the panel of Doctors who concluded that the continuation of pregnancy will lead to grave injury to her mental health.⁸
- In 2017 a woman from Kolkata, filed a petition in Supreme Court which challenged Section 3 of The Medical Termination of Pregnancy Act which denies the permission to abort the foetus beyond 20 weeks of pregnancy. It was discovered that her foetus had congenital defect when she was on 23rd week of pregnancy and had crossed the benchmark of 20 week within which termination of pregnancy is legal.⁹In response to the petition, the Supreme

⁷ <http://www.legalserviceindia.com/issues/topic1492-d-rajawari-vs-state-of-tamil-nadu-terminate-the-pregnancy-of-unmarried-girl.html>

⁸ <https://www.livelaw.in/gujarat-hc-allows-rape-victim-to-terminate-24-week-pregnancy/>

⁹ <https://www.timesnownews.com/india/article/pregnant-woman-knocks-supreme-courts-door-to-abort-23-week-foetus/63935>

Court appointed a Medical Board consisting of 7 Doctors in Kolkata. And to make the MTP act more meaningful the Apex called for a need to amend the act.¹⁰

In a country like India with immense social baggage consisting of evils such as illiteracy and poverty, abortion is always looked down. But the legalising of Medical Termination of Pregnancy has had a positive effect on the society. MTP has shown reduced incidence of suicide and improvement of health and society.

CONCLUSION

Despite the legalisation of abortion in India expected outcomes have not been yielded, morbidity and mortality continues to remain a serious problem for majority of women opting abortion. The move towards amending the MTP Act, 1971 is progressive step towards decreasing count of mortalities and illegal terminations.

Not mere legalising is sufficient but making it accessible and affordable is equally important. This maybe done by mobilising financial, material and human resources for provision of safe and legal abortion procedure and increasing the number of trained and registered medical practitioners and well equipped abortion clinics.

While India may have liberalised policies regarding abortion, but the stigma around abortion still continues to envelope the judicial system and service providers. Therefore it is not only important but mandatory to gain knowledge and ask for the rights in such a society.

¹⁰ <https://timesofindia.indiatimes.com/city/delhi/supreme-court-favours-relaxing-abortion-deadline/articleshow/59294048.cms>