

AN ABORTION: A BLESS OR A SIN FOR A SOCIETY

Rajeev Shukla

Research Scholar, Fairfield Institute of Management & Technology-Affiliated To GGSIPU, Delhi, India

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ABSTRACT

Abortion is defined as the termination of pregnancy of women. There can be many reasons for termination of pregnancy but when pregnancy is terminated without giving any proper reason, and then it is known as illegal termination of pregnancy. When the course of action of abortion starts without any intrusion, then the term known as spontaneous abortion and also known as miscarriage. In 2017, there was only two classification of the abortion i.e. safe abortion or unsafe abortion. When abortion was done by a person who does not have proper training and equipments for the abortion, then it is known as unsafe abortion. But in modern age, as we have very advance equipments, abortion is permitted but proper reasoning is required for the abortion. In India, various laws have been enacted to stop this illegal termination. Prior to 1971, the abortion was criminalized in India under section 312 of the Indian penal code, except in cases where abortion was done to save the life of the women. It was only during 1960 many countries legalized the abortion. In India a committee was constituted in 1964 led by Shanti lal shah and came up with various recommendations, and later the recommendations of the committee was adopted and the bill was passed on August 1971 which is known as medical termination of pregnancy act, 1971.

KEYWORDS: *Abortion, Bless or Sin, MTP Act*

INTRODUCTION

The Medical Termination of Pregnancy (MTP) Act, 1971 gives the lawful structure to making CAC administrations accessible in India. End of pregnancy is allowed for a wide scope of conditions up to 20 weeks of growth-

- When continuation of pregnancy is a danger to the life of a lady or could make grave harm her physical or emotional well-being.
- When there is considerable risk that the child, if born, would be critically handicapped due to physical or mental abnormalities.
- When pregnancy is occurred due to rape.
- (When pregnancy is caused due to failure of contraceptives used by a married woman or her husband.

The medical termination of pregnancy act 1971 was amended in 2002 and it prohibited all the private hospitals to exercise the method of abortion. and committee at various district level were appointed to give the permission to all the private hospitals For guaranteeing consistence and wellbeing of ladies, stricter punishments were presented for MTPs being directed in unapproved destinations or by untrained restorative suppliers by the Act. And later medical pregnancy rule 2003 came to give better facility to all private hospital. The Government took discernment of the difficulties looked by ladies in getting to safe premature birth administrations and in 2006 comprised a specialist gathering to survey the current arrangements of the MTP Act

to propose draft revisions. After that various meeting held between 2006-2010 and 2014 medical termination of pregnancy amendment bill came into existence with various suggestions. Some of them are as follows:

- increasing the provider base
- growing the upper gestation limit for legal MTPs
- increasing access to legal abortion services for women
- Increasing clarity of the MTP law

So, in this research paper researcher will explain various legislation enacted by the Indian government to protect the illegal abortion. And it will also discuss the impact and pressure of the society on women for abortion, with the help of various cases and illustrations researcher will give complete figure about the illegal termination of the pregnancy.

Abortion is Human Right

Abortion is one of the most disputed concepts in the world. It is based on various legal and moral grounds. In Indian society, it is mostly based on moral ground; people in India still believe abortion is not good for society. But Abortion is not something which we can relate with society; it is only related with women's health, so it should be based on the condition and consent of the women and not based on the opinion of the society. In this paper, researcher is going to discuss the abortion with world's perspective and Indian perspective.¹

Abortion According to World's Perspective

Article 1 of the American Declaration of rights and Duties of men and inter American commission of the human rights says that abortion is legalized until the first three months. The abortion is related to women's right and number of international organization had upheld different laws to protect the life of the women. The right is also related to the right to freedom of expression according to which abortion should be based on the free consent of the women.²

Some Historical Cases

Roe V Wades (1973)

Various states of the USA enacted various laws to restrict the abortion, so in this case, Supreme Court of the USA overruled to all the laws which was preventing the abortion of women. In this case, plaintiff wanted to terminate her pregnancy because that was due to rape but state laws were preventing her from termination so she filled a case in the Supreme Court and Supreme Court overruled the laws enacted by the state.

Mergenthaler Smoking and Scott V R (1988)

The Criminal Code of Canada required a pregnant lady who needed a premature birth to present an application to a helpful board of trustees, which brought about postponements. The Supreme Court found that this system encroached the assurance of security of a man. This was subjected to the psychological stress of the pregnant women. Hence, Supreme Court upheld that no such formalities are required.

¹ Joanna Erdman, Abortion in human rights law , (17th October 2019,9:37 A.M.), <https://www.hhrjournal.org/2017/06/theorizing-time-in-abortion-law-and-human-rights/>

² "id"

Paton V United Kingdom (1967)

In this case, court held that Abortion is only permitted if it involves the risk to the life of the women. It is related to life of women, so consent of women is more important.³

Abortion According to Indian Perspective

Indian law allowed abortion if it involves the risk of the life of the women and also related to the physical and mental health of the women. Abortion was illegal in India but with the passing of various act, it become legal. In various Vedas and Upanishads, abortion is condemned; Paragraph 3 of the Code of Ethics of the Medical Council of India says: I will keep up the most regard for human life from the season of origination. The restorative end pregnancy act 1971 made legitimized to premature birth in India.

Some Indian Cases**Dr. Rajeswari V. State of Tamil Nadu and Others**

This case law was of a girl of 18 years who wanted to terminate her pregnancy which was the consequence of rape and also it was affecting to the health of the girl so Supreme Court permitted her to terminate her pregnancy.

Dr. Nisha Malviya and another V State of M.P

The denounced had submitted assault on minor young lady matured around 12 years and made her pregnant. The charges are that two other co-blamed took this young lady, and they ended her pregnancy. So the charge on them is right off the bat causing unsuccessful labor without assent of young lady. The Court held all the three blamed blameworthy for end of pregnancy which was not agreed by the mother or the young lady. Shri Bhagwan Katariya and others v State of m,p

A women was married to the Navneet and Navneet and his family members took the decision of the abortion of the women without her consent and abortion was done for which they were made liable for the act.

According to section 3 of the medical termination of pregnancy act 1971, doctor can terminate the pregnancy of women to save the life but still it is presumed that they had taken the permission of women without her consent it is also not possible.

Thus, the case laws show that a woman has an absolute right to abortion and no one can take away this right from her. The Judiciary has been playing a important role in securing these rights to women. Right to abortion is a fundamental right of privacy.

Legislations Related To Medical Termination of Pregnancy**Before 1971**

Abortion was condemned under segment 312 of the IPC with the exception of in the situations where it was completed to spare the life of the ladies. It was culpable offense and ladies could get a discipline of prison for a long time and a fine. In 1960, when 15 countries legalized to abortion, then shah committee was constituted to look over this matter and they proposed a bill which was passed by both the houses and medical termination of pregnancy of act 1971 was enacted. This was the first legislation for the abortion.

³ "id"

Medical Termination of Pregnancy Act, 1971

This act legalized to abortion with various condition. According to this act, pregnancy can be terminated under 20 weeks in various situations:⁴

- When the life of the women is at risk.
- When there is risk to the life of child who is going to born or in the condition when possibility of handicapped child.
- When pregnancy is due to Rape.

When pregnancy is caused due to failure of contraceptives used by a married woman or her husband. Medical termination of pregnancy act also specifies who where and when the pregnancy can be terminated

According to this act a medical fractioned who is qualified according to Indian medical council act and registered under state medical registrar. This act was the first legislation in India for abortion after that amendment came and this law become much prevalent in Indian society.

MTP Act, Amendment 2002

The Medical Termination of Pregnancy (MTP) Act 1971 was altered in 2002 to encourage better execution and increment access for ladies particularly in the private wellbeing area. It reduced the power of private practitioner and district level committee was set up to look over this matter. The word 'LUNATIC' was substituted with the words 'ILL PERSON'. This adjustment in dialect was founded to lay accentuation that "ILL PERSON" implies a man who is in requirement for treatment by reason of any psychological issue other than mental impediment. Strict penalties were introduced for unauthorized practitioner.⁵

MTP Rules 2003

In this act, the proper committee were established to look over these matters and these committee had a power to give licenses to private practitioner and also they can check equipments which practioner are using and also they can check the qualifications of the doctors. They can cancel the license if they found that doctors are incompetent.⁶

MTP AMENDMEMNT ACT 2014

The government constituted a group in 2006 for the review of the safe abortion of women. Because after the amendment women were still facing problem with various technicalities so this group proposed various amendments for the safe abortion:⁷

These were some law which was enacted by parliament for the protection of the rights of women and to maintain the equality among society.

⁴ Medical termination of pregnancy act(1971)

⁵ Medical termination of pregnancy amendment act(2002)

⁶ Medical termination of pregnancy amendment act(2003)

⁷ Medical termination of pregnancy amendment act(2014)

METHODS OF ABORTION

There are different types of methods for safe abortion present in India and practitioner are using these methods for the safe abortion some of them are as follows:⁸

Manual Vacuum Aspiration (MVA): it is the safe and effective method of abortion; it involves evacuation of the uterine contents by the use of a hand-held plastic aspirator. In this method, women have to spend very less time in hospital and also she need not to take more aesthetic drugs and also there is very less probability of falling more blood.

Electric Vacuum Aspiration (EVA): Similar to MVA, it includes a suction strategy; however the former uses an electric siphon to make suction rather than a manual siphon.

Medical Methods of Abortion (MMA): it is the method where the pregnancy can be terminated by using drugs. It is generally used for the termination of unwanted pregnancy and women can terminate her pregnancy just by taking the drugs at her home. There are two drugs which can be used for the termination of pregnancy they are:

Mifepristone (RU 486): progesterone is hormone which is important for the development of the baby and this medication is hostile to progesterone, it ceased the development of the hatchling.

Misoprostol: This is utilized to incite softening of the cervix with the goal that it is widened effortlessly. It likewise delivers uterine compressions. Because of cervical softening and compression of the uterine muscles, it ousts the substance from the uterus.

These two drugs, mifepristone and misoprostol can only be used up to 9 months and it is for considered to be safe abortion method and it should be only taken by the permission of the practitioner.

Dilation and Curettage (D&C): This was only method available in India till 1971. In this method, doctor remove products of conception using a metal curette in the condition of anesthesia.

These are some methods which Practitioner uses for the abortion in India. All these methods can be used only by registered Practitioner. Nobody can use without any proper permission by any authorised organisation.⁹

Late Termini Nation of Pregnancy

The MTP act allowed the termination of pregnancy only of 20 weeks but according to section 5 of the MTP act, when there is risk of life, then this limit does not bind on the women. There are some recent cases where these limits have been crossed they are follows:

- In December 2017, a multiyear of assault survivor came to at the Bombay high court for the end of her pregnancy. As this pregnancy was caused because of assault and furthermore the young lady was not physically solid to deal with this pregnancy so court allowed her authorization for the end of pregnancy.
- A multi year old that had run off to wed looked for consent from the Delhi high court to end her multi week pregnancy and later after the examination of the soundness of the young lady, court established that young lady isn't physically solid for the pregnancy, so court allowed her authorization for the end of the pregnancy.

⁸ Hand book on medical method of abortion ,<http://www.health.mp.gov.in/mtp/MMA-Reference%20Manual.pdf>

⁹ ‘id’

- Women from thane approached the Bombay high court in December 2017, and after the examination of the health court founded that if pregnancy will not be terminated then there is risk of the life of the children and women, so the court granted her permission for the termination of the pregnancy.
- In September 2017, women reached the Supreme Court for the termination of the pregnancy of the 31st week due to failure of her both kidneys she was not able to handle this pregnancy, so Supreme Court granted her permission for the termination of the pregnancy.
- A girl of 17 year approached the Karnataka high court for the termination of her 20 week pregnancy, which was caused due to rape. After careful examination of the girl, health court founded that she is not physically fit for the pregnancy, so granted her permission for the termination of the pregnancy.

So, from all above case, it is clear that according to MTP act, a women cannot terminate her pregnancy after 20 weeks, but when there is risk of the life of the women or child or women is not physically fit for the pregnancy then court can grant her permission for the termination of the pregnancy.

Impact of Abortion on Society

India is country which is known for their traditions and culture. We was under British rule for long period but yet we did not lose our tradition and culture. In India, women are supposed to the goddess but still when we look over the crimes towards women then it is irony to say that in India women are in position of god. In most of the states women are still dependent on man for their survival and their only work is to look the home affairs and to look the children. In many societies, abortion is seen as a type of sin and many areas people don't care about age and condition of women, their motive is just to give birth the child. Women can't resist because they are dependent upon men. It generally happens in the rural areas where people are unaware of the laws and its impact. They still live according to their old traditions and culture. Generally, in those areas, women don't like to go to hospital during the time of pregnancy. They prefer home for the birth of the child. This is because of lack of awareness about the laws and their impact.¹⁰

Under the watchful eye of abortion law change, premature birth advocates contended that legitimizing abortion would positively affect society. Following quite a few years a large portion of these forecasts have refuted. As opposed to giving ladies more opportunity, abortion has prompted exploitation by men who never again need the obligation of accommodating their kids. A few men feel they have been disappointed and weak as they have no lawful rights with regards to abortion. Premature birth has not diminished the wrongdoing rate as promoters asserted would occur, the inverse is valid. Abortion of undesirable children has not prompted less casualties of tyke maltreatment as asserted numbers are in actuality on the expansion. Rivals said legitimizing premature birth would be the tricky incline to the acknowledgment of child murder and willful extermination, this has occurred. On account of assault or interbreeding, driving a lady who winds up pregnant by this brutal demonstration to complete the pregnancy and conceive an offspring could make assist mental damage the person in question. These ladies are attempting to adapt to passionate and physical torment and are frequently unconscious they could be pregnant. The 'following morning' pill could be successful, yet the window of time to get it is exceptionally constrained.¹¹

¹⁰ Graham, RH; Robson, SC; Rankin, JM "Understanding feticide: an analytic review", *Social Science & Medicine* (18 October, 9:37). 66 (2): 289–300. doi:10.1016/j.socscimed.2007.08.014. PMID 17920742

¹¹ Philip G. Ney, M.D., "Abortion and Child Abuse: Which is Cause, Which is Effect?" Paper presented at a conference entitled "Psychological Aspects of Abortion." 1978

In the example of assault and inbreeding, prompt and appropriate therapeutic consideration can guarantee that a lady won't get pregnant. In the event that that window is missed, appropriate advising could urge the injured individual to proceed with the pregnancy and give them the decision to keep the tyke or place it in a supportive home. Fetus removal rebuffs the unborn tyke who carried out no wrongdoing; rather, the culprit ought to be rebuffed. Notwithstanding being enemy of premature birth, the star life development is likewise against willful extermination, helped suicide and capital punishment. Eventually, a lady's entitlement to pick is to a great degree touchy issue and one where both star decision and professional life backers can make convincing contentions. One thing is sure; the two sides of expert life and genius decision contentions sound good to their defenders, and raise worries to their rivals. In the expressions of a mysterious statement - "No lady needs a premature birth. It is possible that she needs a kid or she wishes to stay away from pregnancy." That is one statement both side can concede to.¹²

Illegal Abortion

It is clear that after the medical termination of pregnancy act 1971, abortion become criminalized in India and with the time and various amendments, all the laws become more affective and various hospital has established a separate expert for the abortion and new modern and advanced technology made it very easy procedure it now do not take much time one or two days are sufficient for the abortion and also now it does not effect to the health of the women. And according to medical termination of pregnancy act 1971 and various amendments a pregnancy can be only terminated when there is risk of life for women and child or women is not physically fit for the pregnancy and the pregnancy should be terminated within the 20 weeks. There can be many situations when court can grant permission but it is totally based on the power of the court. As we know that with great advantages there are also some disadvantages when people terminate pregnancy through illegal methods or without any reasoning then it become crime and it is also called as the illegal termination of pregnancy. In Indian society people still believe that boys are more valuable than girls so when they knew that the girl is going to take birth then they try to terminate pregnancy through various illegal means because law does not support this type of abortion. This type of abortion is crime under Indian legal system. And with the advance technology, now various practitioners are performing all these practices without any authorization, which also affect the health of the women and it also affect the society. These types of abortion are generally performed in rural areas, where people kill the girls before their birth. In modern age, there is trend of relationship which is also responsible for illegal abortion. Termination of pregnancy is not a problem but a proper reason should be given for the termination because taking life of someone is also a crime and against the law of nature. We should not interfere with the law of nature, it is the highest law of the universe and we should work according to these laws. Also illegal termination of pregnancy can be reason behind the gender inequality as many girls are killing before their birth so if this will continue then in future gender inequality may be the one of the most serious issue. Rape and other type of molestation are also reason behind the illegal termination so it is the duty of the Supreme Court to give proper guidelines about these type abortions and this type of abortion should be kept very secretly so women do not hesitate to take any legal action.¹³

12 "id"

13 A Faundes & E Hardy, *Illegal abortion: consequences for women's health and the health care system*, (19th October, 2019, 8:33), <https://www.sciencedirect.com/science/article/pii/S0020729297028609>

Effect of Abortion

Abortion is not good for health it not only effect the women health but also to the future pregnancies. Safe abortion generally does not create problem but like any medical treatment there is always some risk. The risk can be more dangerous in later pregnancies. The various risks that can be arising are as follows:¹⁴

- Infection of the womb- generally occurs in some abortion and it can be treated with antibiotics.
- Some of the pregnancy remaining in the womb- it also occurs in very few abortions and if this happens and further treatment may be required.
- Continuation of the pregnancy- generally happens in very few pregnancies and can be treated in further treatment.
- Excessive Bleeding- it occurs in very few pregnancies and sometimes it may need blood transfusion.
- Damage of the entrance to the womb- it generally occurs in surgical abortions.
- Damage to the womb- it also occurs in surgical abortions. And can be treated in further treatment.
- Women who have an abortion can be suffering from mental problems due to stress and there is no link between abortion and having breast cancer.

Effect on Fertility and Future Pregnancies

Abortion will not effect on future pregnancies and having a normal pregnancies in future. But there is small risk in fertility, if you develop a womb infection that isn't treated promptly. The infection could spread to fallopian tubes and ovaries – known as pelvic inflammatory disease (PID). It increases the chances of infertility in this situation egg implants themselves outside the womb. But this infection can be treated just after abortion and antibiotics should be taken just after abortion to prevent from this infection. Having several abortions can be reason behind the premature birth. So people should careful about abortions. So after abortion antibiotics should be taken properly and all other necessary prevention should be taken continuously and consultation with doctor should be on regular basis. Abortion does not harm too much for future pregnancies and fertility but still people should prevent from having many abortions they can used other alternatives to prevent from pregnancies only in difficult condition should take such step.

CONCLUSIONS

This research paper concludes that in India abortion was criminalized before 1971, but the medical termination of pregnancy of act 1971 made abortion decriminalized in India and it gives various condition that when, who, and how the abortion should be done and with the help of various amendments like MTP amendment act 2002, MTP amendment act 2003, MTP amendment act 2014 made this act more clear and active and various committees were setup to give the license to the practitioner to perform this practice. But there was a condition for the termination of the pregnancy; the pregnancy can be only terminated if there is risk of life for women and children or women is not physically strong to maintain the pregnancy and the pregnancy can be only terminated within the 20 weeks but in various situation court have powers to give permission for the termination of the pregnancy. But as we see that in Indian society people misuse the concept of abortion

¹⁴ Karen Resendiz, "Effect of abortion on society" (19th october, 2019 10:10), <https://prezi.com/943ldr1clsn/effects-of-abortion-on-society/>

they harm the society by killing girl child before their birth and they do it through illegal means so government should take proper action to look over this matter because if this will continue then the problem of gender inequality may be arise in future. And also we saw that society does not see the abortion with good eye. Proper awareness should be spread among people so that they can understand the outcomes of the abortion. Sometimes doctor perform abortion in such a way that so he can take much money from patient and we all know that abortion is not very costly process there should be proper committee to look over this matter. And generally sometimes many infections can occur after the abortion so proper action should be taken after the abortion a patient should consult with his doctor on regular basis and all other necessary precaution should be taken. Abortion should be last option to prevent from the pregnancy there are other alternative which should be used because sometimes abortion is not good for health only in difficult condition the method of abortion should be applied. And government should take proper action to stop all illegal abortion.

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