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Abortion: A Woman's Cardinal Right

Sonalika Tewari

ABORTION: A WOMAN'S CARDINAL RIGHT

“Reproductive freedom is critical to a whole range of issues. If we can't take charge of this most personal aspect of our lives, we can't take care of anything. It should not be seen as a privilege or as a benefit, but a fundamental right.”

— Faye Wattleton

A study published in **The Lancet Global Health**, jointly undertaken by researchers at the International Institute for Population Sciences (IIPS), Mumbai; the Population Council, New Delhi; and the New York-based Guttmacher Institute; found that **15.6 million** abortions were performed in India in 2015. Of these, **11.5 million** took place outside health facilities.

The term abortion refers to the intentional medical termination of pregnancy in India, which can be done in two ways – medical or surgical.

MEDICAL ABORTION:

A woman who is pregnant for less than seven weeks can get medical abortion. This method includes terminating a pregnancy with the aid of medications and tablets. It is a non-surgical process that must be performed under a physician's supervision.

SURGICAL ABORTION:

If a woman wants to have an abortion after seven weeks of conception, then a surgical abortion can be done. These are much more successful than a medical abortion, with less chance of an unsuccessful operation.¹

Independence is meaningless if one does not have full rights over one's body. Abortion is a matter of a woman's personal liberty and privacy. Those women who believe that termination of pregnancy is in their best interest must be respected. Those who do not believe in it may restrict their faith to the personal realm and not impose it on others.

Let's look into the journey of Abortion laws in India. Prior to **1971**, abortion was criminalized under Section 312 of the Indian Penal code of 1860, which described it as intentionally "causing miscarriage". The only exception made was in cases where abortion was carried out in order to save a woman's life. However, post-independence things changed drastically. In **December 30, 1966**, the Shantilal Shah Committee report came out, which recommended that abortion and reproductive laws need to be regulated in India. The committee was set up in 1964 after 15

¹ A amlan, Is Abortion Legal in India? (Sep. 12, 2019), <https://www.myadvo.in/blog/is-abortion-legal-in-india/>.

countries legalised abortions in the 1960s. In **August 10, 1971, The Medical Termination of Pregnancy (MTP) Act, 1971** was passed which legalised abortion.² As per Section 3(2) of the Act, abortion is permitted up to 12 weeks of pregnancy. Between 12 and 20 weeks, pregnancy can be terminated if not less than two registered medical practitioners are of the opinion that the termination is in good faith of the mother and child. However, post 20 weeks, termination of pregnancy is not permitted.³

Recently, the cabinet approved the **Medical Termination of Pregnancy (Amendment) Bill, 2020** which will soon be tabled in Parliament. It seeks to amend the Medical Termination of Pregnancy Act, 1971 and follows the MTP Bills of 2014, 2017 and 2018, all of which previously lapsed in Parliament.⁴

The Medical Termination of Pregnancy (Amendment) Bill 2020 amends the provision mentioned earlier to state that pregnancy may be terminated within 20 weeks, with the opinion of a registered medical practitioner. For termination of pregnancy between 20 to 24 weeks, the approval of two registered medical practitioners will be required. The termination of pregnancies up to 24 weeks will only apply to specific categories of women, as may be prescribed by the central government. In addition, the central government will notify the norms for the medical practitioner whose opinion is required for termination of pregnancy.⁵

Under the Act, if any pregnancy occurs as a result of failure of any device or method used by a married woman or her husband to limit the number of children, such an unwanted pregnancy may constitute a grave injury to the mental health of the pregnant woman. The Bill amends this provision to replace ‘married woman or her husband’ with ‘woman or her partner’.⁶

The bill stipulates that no registered medical practitioner will be allowed to disclose the name and other details of a woman whose pregnancy has been terminated, except to a person authorized by any law. Anyone who flouts this clause shall be punished with a term of imprisonment of up to one year or a fine, or both.⁷

Though the MTP Bill, 2020 attempts to bring positive amends in the previous act of 1971 yet it fails to address some major issues. It still doesn't allow abortion as per the request made by the

² R gupta, abortion-in-india-experts-call-for-changes (Aug. 27, 2019), <https://www.downtoearth.org.in/news/health/abortion-in-india-experts-call-for-changes-66369>.

³ L Coutinho , Constitutionality of abortion laws in India (. ,), <http://www.legalserviceindia.com/legal/article-1691-constitutionality-of-abortion-laws-in-india.html>.

⁴ A Agarwal, Seeking a more progressive abortion law (Feb. 10, 2020), <https://www.thehindu.com/opinion/op-ed/seeking-a-more-progressive-abortion-law/article30777394.ece>.

⁵ The Medical Termination of Pregnancy (Amendment) Bill, 2020 | PRSIndia (. ,), <https://www.prsindia.org/billtrack/medical-termination-pregnancy-amendment-bill-2020>.

⁶ Supra note 5

⁷ Supra note 7

woman at any point after the pregnancy; neither does it take a step towards removing the biasness against unmarried women by amending the relevant provision. And ultimately, it only extends the gestational limit for legal abortion from 20 to 24 weeks for limited groups of women, such as rape survivors, pregnancy victims and minors. This implies that a woman who does not fall under such a criteria cannot obtain an abortion after 20 weeks, even though she suffers from extreme physical or emotional disability as a result of pregnancy.⁸

Right to abort falls under the ambit of right to life of a woman guaranteed under Art 21 of the Indian Constitution. And right to life includes right to privacy and right to live with dignity and integrity. A mother's right needs to take precedence over the right of an unborn child. Even the Supreme Court in the case of *Ms X and Dr Nikhil Datar vs. Union of India* allowed the legal termination of pregnancy after 20 weeks. This was only done after being convinced that the child was vegetative and abortion was in the best interest of the woman. Women's reproductive rights are indicia of women's equality since they ensure that females have right over their bodies completely.⁹

⁸ Supra note 4

⁹ N Datar, Liberal abortion laws are vital | Deccan Herald (Mar. 10, 2020), <https://www.deccanherald.com/opinion/panorama/liberal-abortion-laws-are-vital-812290.html>.