



## LEGISLTATED WOMB VIS-À-VIS ABORTION RIGHTS OF WOMEN IN INDIA

APOORVA KAUR

### ABSTRACT

*The objective of this research paper is to apprise about the abortion regime and legislative policies on abortion in India. The dimensions of legislative policies of abortion is undertheorized road to autonomous reproductive rights. The elements of morality, health and justice are vital for understanding the picture of abortion law and its relation to abortion rights in India. The author also sketches the comparative analysis of abortion rights in India with the western countries. The author also discusses the case of Roe v. Wade which is under the spotlight for scrutinization. In recent developments, where the legislation and landmark judgments have recognized the women's rights to make choices for reproductive decision making, but there is still lack of understanding abortion as to important ingredient of pregnant person's equality. An undesirable pregnancy can force the woman to opt for unsafe abortion which will be hazardous for her health. The intervention of state should only be to the extent of safe abortion care, but intervention with respect of choice is against the principle of equality and privacy of women. The author also addresses the bill for abortion which is yet to be passed by council of states. The author stresses upon the lacunas in the current policies and concludes by suggesting the need for reproductive autonomy and decriminalization of safe abortion.*

**Keywords:** Abortion, Womb, Women, India

## INTRODUCTION

Women living in any country regardless of whether they are established or underdeveloped, are vulnerable to unexpected pregnancy complications.<sup>1</sup> Due to various unforeseen causes, the unwanted pregnancy could occur in that a woman should be entitled to terminate the pregnancy. There has been a long debate between ethics, morality, and religious convictions between the definition of abortion and its related laws. A woman, however, faces this gender inequality with empowerment and lacks autonomy to choose to abort the unborn. An unintended pregnancy can cause a woman to opt for an illegal abortion that is dangerous to her health.

Since 1971<sup>2</sup>, abortion has been legalized in India, but access to safe abortion is a dream for many Indian women. Abortion is a woman's human right according to one class of society, i.e. a contentious right in third world countries such as India and South Africa. In the sense of few countries, restrictions placed on said human right are in the name of 'mother's right to health' while others limit it in the name of 'embryo's right to life' and increase female foeticide and moral and social restrictions.<sup>3</sup> It becomes the issue of gender justice and equality.

Abortions are criticized by pro-life adherents. The key point supported by them is that life begins at the creation of the zygote, so the zygote is considered to be a living entity as soon as the female conceives. Aborting a living being is deemed to be a crime as serious as killing a human being.<sup>4</sup> It is considered that aborting a living being is a crime as serious as killing a human being.<sup>5</sup> On the other hand, pro-life advocates claim that legalizing abortion would help teens get away with pre-marital pregnancies and encourage pre-marital sex that is deemed contrary to social values.

The fact that the MTP Act has little safeguards for women and more guarantees for the safety of doctors carrying out medical terminations is sad and harsh.<sup>6</sup> Rather than granting women the freedom to select and receive safe abortions, this provision strips them of their own bodies from the agency.<sup>7</sup>

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<sup>1</sup> Parmar Vinod, "Abortion Rights- A Comparative Study India, USA and Africa", International Journal of Law and Management Vol.3 (3) 895-914

<sup>2</sup> Medical Termination of Pregnancy Act, 1971

<sup>3</sup> Ibid, See Note 1

<sup>4</sup> Garg Rachit, "Comparative study of abortion laws in India and the USA", (2020) available at <https://blog.ipleaders.in/comparative-study-of-abortion-laws-in-india-and-the-usa/>

<sup>5</sup> Ibid, See Note 4

<sup>6</sup> Kumar Shonotra, "Why India's law on abortion does not use the word 'abortion'" (2020) available at <https://theprint.in/opinion/india-law-abortion-medical-termination-pregnancy-act/423380/>

<sup>7</sup> Ibid, See Note 6

Women have access to primary health care services in remote areas that do not have physicians that can conduct surgical termination procedures. This makes abortion difficult for them to access.<sup>8</sup> High costs of termination of pregnancy, lack of medical facilities in major rural areas, lack of confidentiality and social stigma, particularly in the case of unmarried women, are the major causes of women's deaths from unsafe abortions.

## **LACK OF REPRODUCTIVE AUTONOMY**

Reproductive autonomy is understood as the right of women to choose whether or not to have children and if so, the right to decide the number of children they want when and with whom, and the right to choose the means and methods to exercise their fertility management choices.<sup>9</sup> In the Yogyakarta Principles and in the Convention on the Rights of People with Disabilities, the right to reproductive health is specifically acknowledged ("CRPD")<sup>10</sup> In addition, monitoring committees have recognized various human rights treaties, including the Convention on the Abolition of All Types of Violence Against Women (CEDAW), the United Nations Convention on the Rights of the Child (UNCRC), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>11</sup>

A fundamental standard of substantive freedom and equality in society is the right of women to monitor their reproductive destiny and freely choose to terminate unwanted pregnancies.<sup>12</sup> Subject to medical complications, the option to have a child or not should be taken for the pregnant woman alone. An unintended pregnancy can cause women to have unsafe abortions that can result in significant physical and mental harm or even death.<sup>13</sup>

State acts should be limited to delivering, along with other sexual and reproductive healthcare, comprehensive and reliable abortion treatment. In addition, any interference in matters of preference

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<sup>8</sup> She the people

<sup>9</sup> Jyotsna Agnihotri Gupta, *New Reproductive Technologies, Women's Health And Autonomy: Freedom Or Dependency?* (2000).

<sup>10</sup> Article 25, *Convention on the Rights of Persons with Disabilities*.

<sup>11</sup> *Right to Life? Women's Rights and Prenatal Protections under Human Rights and Comparative Law* (2014) Centre for Reproductive Rights,

<sup>12</sup> *Ibid*, See Note 1

<sup>13</sup> *Ibid*, See Note 6

is not only contrary to the ideals of equality, but also a violation of the constitutional right of women to privacy.<sup>14</sup>

### **LEGISLATIVE FRAMEWORK: DISCUSSING THE AMENDMENT BILL**

The Indian Penal Code, which is the country's fundamental criminal law, has induced abortion as a criminal offense under Sections 312 to 316 of IPC 1860 in view of the religious moral, social and ethical history of the Indian community.<sup>15</sup>

In 2009, in the case of Suchita Srivastava vs Chandigarh Administration, the Supreme Court of India delivered a landmark judgment in which it was held that the right to reproductive autonomy is an integral part of the right to life under Article 21 of the Constitution of India.<sup>16</sup> Despite this, legislations remain that undermine the right of women to reproductive autonomy. Though not explicitly specified in the act, termination of a rape victim's can take place even after the 20-week limit has been surpassed by plethora of case laws which calls to re-look in the existing framework and seek amendment.

An amendment that would extend the upper limit for filing for abortions to 24 weeks has been introduced, but none of the provisions of the amendment bill relate to giving women control or agency over their own bodies in order to make their abortion decisions. The maximum gestational age has been raised to 24 weeks, ensuring that opinions from two doctors over one are required for pregnancies between 20-24 weeks.<sup>17</sup> In addition, the bill also plans to shift "married women or her husband" to "woman and her partner". The bill is progressive in nature, but the question is does raising the upper limit for termination of pregnancy from 20 to 24 weeks merely address the accessibility issues?<sup>18</sup>

The 1994 Act on Pre-Conception and Pre-Natal Diagnostic Techniques (Regulations and Misuse Prevention) limits the right to abort the foetus on the basis of its gender, which may lead to sex-selective abortions in turn.

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<sup>14</sup> Ibid, See Note 6

<sup>15</sup> Gochayyat Sai, "Understanding the right of abortion under Indian Constitution" available at <http://www.manupatra.com/roundup/373/Articles/PRESENTATION.pdf>

<sup>16</sup> Priyanka Chakrabarty, "Abortion Laws For Women: Why Is The Womb So Heavily Legislated" (2020) available at <https://www.shethepeople.tv/health/women-reproductive-rights-india-abortion/>

<sup>17</sup> <https://indianexpress.com/article/explained/explained-1971-abortion-law-changes-india-6244999/>

<sup>18</sup> Ibid, See Note 16



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## ROE. V. WADE: TURNING POINT

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Roe v. Wade is almost synonymous with the US and abortion laws. The US Supreme Court's decision in Roe v. Wade put the contentious issue of abortion to rest and it is now legal in every state of the United States of America. It founded that every woman has a right to self-determination and that the right to privacy falls under abortion. Her decision should be free from unjustified interference by the government into such a fundamental matter.<sup>19</sup> The criminalization of abortion is violative of Due Process except to save a mother's life.<sup>20</sup> United States of America recognizes the woman's right to choose abortion that comes under right to privacy. The states in the USA had very stringent abortion standards before the landmark judgment of Roe vs. Wade that did not authorize women to terminate pregnancy until the continuation of pregnancy posed a significant health risk to the pregnant woman. Even in this period, one of the world's most progressive nations, the United States, does not allow women to abort legally if they become pregnant due to rape or incest. In addition, the mental condition of pregnant women is considered for abortion by very few states in the USA. There is also little thought of the physical or psychological effect of continuing an unwanted pregnancy. This landmark judgment is now under scrutinization and the fate of the celebrated judgment will be reconsidered.

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## ABORTION LAWS IN DIFFERENT COUNTRIES

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There are different limits on abortion in different countries. Religions across continents have a different take. Catholic Christian priests are against the loss of any life, and therefore against MTP. The Hindu religion does not condemn abortion but advises against it.<sup>21</sup> Some nations' laws do not allow abortion under any circumstances, including when the life or health of the woman is at risk.<sup>22</sup> For instance, Nicaragua falls under such category. Some countries' laws allow abortion when the life of the woman is at risk, for example, Brazil. The laws of as many as 56 nations allow abortion for health or medicinal purposes. For eg. Argentina.

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<sup>19</sup> Ibid, See Note 16

<sup>20</sup> Ibid, See Note 16

<sup>21</sup> <http://www.bbc.co.uk/ethics/abortion/religion/religion.shtml>

<sup>22</sup> <https://www.thehindu.com/data/data-how-many-countries-allow-abortion-on-request-where-is-abortion-completely-prohibited-and-more/article30981255.ece>



In addition to health, some nations often recognize the social or economic circumstances of a woman in order to facilitate abortion under a wide variety of conditions. Some of the countries included in the group are India, Japan and the United Kingdom.

## CONCLUSION

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Women are still dying of septic abortions and/or enduring immense pain, public-shaming and judgemental-abusive attitudes. Unless we are plugging these holes, the situation will not change dramatically because 80 percent of women are unaware on the law to begin with.

While the MTP Bill, 2020, is a step in the right direction, the MTP Act also fails to fix most of the issues. At first, it doesn't give any opportunity to access abortion on request at any point after the pregnancy. Secondly, by amending the relevant provision, it does not take a step towards eliminating discrimination towards unmarried women. Third, only for particular groups of women, such as survivors of rape, victims of incest, and minors, the gestational limit for legal abortion from 20 to 24 weeks has been extended. This implies that even though she suffers from significant physical or mental damage due to pregnancy, a woman who does not fall into these categories will not be allowed to pursue an abortion after 20 weeks. Lastly, there is a gap with respect to provisions for abortion of transgenders, the bill is silent for them.

Although the new bill has raised the upper cap, the road to the right to abortion and the right to sexual choice will not be filled. It still remains with discretion of doctors and pressure of family. The route to this path is very tough and difficult. India should be liberalizing the laws of abortion. Women's maternal health should be prioritized and women's human rights, such as the right to equality and privacy, should be well secured. With unregulated abortion options, the birth count will be lowered and it would also be financially advantageous for poor families. It is argued that in order to meet its foreign and constitutional responsibilities, the government must take responsibility for the numerous social patterns that deprive women of agency in determining whether to terminate their pregnancy or not. The issue still remains unanswered that why is the womb so heavily legislated?