



ABORTION SYSTEM: AN INHERENT RIGHT OF WOMEN AND NEED FOR REFORMS

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INTRODUCTION

The laws related to abortions has emerged an issue in the today's Indian society with the statistics showing an increase in the rate of maternal death in India as the legislation regulating the abortions policies are unworthy to curve the situation are much based on the old school of thoughts not recognizing the human rights of women, right to choice or fundamental rights under the constitution. In our democratic journey, the country has realized and recognized the idea of human and individual rights which has led a remarkable change in the social structure of India such as homosexual rights, striking down of adultery rule which considered women as property of the husband, Sashimala case, yet there has to be much need of change considering women rights and abortion system is one such issue. There are many issues related to abortions, such as illiteracy, unawareness, stringent laws and many more but the paper discusses the present issues taking the laws or statute related to abortion into consideration and the impact over women at large, were the focus is on constitutional aspects of the laws and the violation of the rights of women autonomy to her body, taking in the note the international and regional treaties and convention, case-law of international courts and the constitution of India itself.

ABORTION SYSTEM ACROSS THE WORLD

The right of abortion is a concept which has still not come into the picture, major practice in countries shows abortion as not a right but some legal allowance to women in certain cases such as rape, mental, physical challenge to women or foetus or in case of contraceptive failures, there are countries with least in numbers that give rights to women on grounds of choice that is on request or in case of economic crises, about two- thirds of countries accepts abortion when the physical or mental health of the mother was endangered, and only in half of the countries when the pregnancy resulted from rape or incest or in cases of foetal impairment and only about one third of countries permitted abortion for economic or social reasons or on requestⁱ. According to reports by United Nation's and other such organizations the world prospect to abortion is not pleasing, almost all states till now have recognized abortion to be necessary in certain conditions that is a mental and physical health issue to mother or child, but states still have not recognized it as a right of women, developing countries are high in number with not considering abortion as right to choice of women despite the fact that they have already accepted such rights in the international forum under relevant conventions, the UN report 2015 states, average unsafe abortion rate was more than four times greater in countries with restrictive abortion policies in 2011 (26.7 unsafe abortions per 1,000 women aged 15 to 44 years) than in countries with liberal abortion policies (6.1 unsafe abortions per 1,000 women aged 15 to 44 years).ⁱⁱ The document published by OHCHR, shows the statistics of an annual rate of 22 million unsafe abortions, causing 47,000 death in a year, resulting violation of their human rights to life, health, privacy and reproductive rights, restrictive rights to



women legally and morally too, lack of health care and facilities to women are major reasons for such conditions.

INDIA ON ABORTION SYSTEM

In India, the legalization of abortion is as among 2/3 of the countries, which legalized abortion on the ground of risk to child or mother, in cases of sexual assault, mental and physical harm to mother and failure of contraception only in cases of married women but not on the request of the women or socio-economic causes, the studies conducted in relation shows that the country faces huge cases of unsafe abortion not done by medication but different methods due to restrictive laws followed, the Nuffield Department of Population Health deals with abortions system in India claims, there were 89 447 abortions among 1, 876 ,462 pregnant women in 2007-2011 (4.8%; 95% CI 4.8 to 4.9). Of these, 58 266 were classified as unsafe (67.1%; 95% CI 66.7 to 67.5). There were 253 abortion-related maternal deaths (0.3%; 95% CI 0.2 to 0.3)ⁱⁱⁱ; yet another report of *Indian Journal of Medical Ethics* said 10-13 per cent of maternal deaths in India are due to unsafe abortions, the major reason being a restriction on abortion after 20 weeks and women being using alternative unsafe local methods to terminate their pregnancies.

There are many problems which cause death due to unsafe or refusal of abortion or mental trauma, the lack of awareness, illiteracy, stringent and weak backing of law for the right of abortion and failure in facilities are the major issues where country lack.

IMPACT ON THE WOMEN

The reports on abortion in the world indicates that the women in the world are not safe in

legal as well in social terms as the laws, social norms, restrictive legal rights and protection, adoption of weak administrative policies are the major issues responsible for such situation of abortion system, major religious norm does not allow women to terminate even if in a worse situation, the legal policies adopted by legislators does not protect women and compel women to adopt unwarranted methods which are the major cause of death, the lack of proper functioning of administrative bodies have also been the reasons, countries have also not adhered to the guidelines provided by the WHO.

Who suffers the most?: Women aged 15-19 Adolescents or women of minor age of 15 – 19 are the most affected class, the social practice unawareness and non- medical methods of giving birth and abortion of child are being the huge reasons, adolescent pregnancy is the most concerning issue, the underdeveloped mentally and physique of the minor women leads to death of the child and most of the times women too, the WHO document ‘Adolescent Pregnancy’ shows almost three millions of 15-19 going unsafe abortion from poor class or middle- class family, the underdeveloped countries showing the high ratio where less educated or rural areas are most affected, the social practice of child marriage has stimulated the process at a high rate, the study published in ‘The Lancet’ shows clear proves to claim child marriage one big of adolescence pregnancy “Nguyen and colleagues analyzed data on 60 096 primiparous women aged 15– 49 years who gave birth between 2010–16 from the fourth National Family Health Survey (NFHS-4) 2015–16. 26.8% of girls (17.5% in urban and 31.5% in rural areas) were married before 18 years of age in 2015– 16, and the states of Bihar (42.5%), West



Bengal (41.6%), Jharkhand (37.9%), and Uttar Pradesh (21.1%) reported high prevalence of child marriage. Early marriage of girls infringes on their social and health rights and, as gender researchers have shown, often leads to school dropout, fewer livelihood options, lower bargaining power within households concerning their autonomy or say in family planning, social isolation, and domestic violence^{2iv}

ABORTION LAWS IN INDIA

Medical Termination of Pregnancy Act, 1972

The MTP Act is the major act which regulates the abortion mechanism in India, it legalizes the in a certain situation, the major problem is the law though legalizes abortion in India but it totally refuses the right of women over her body and her reproductive rights, pushing the person to unsafe and expensive abortions, affordable by only some people resulting other non- medicinal and insecure methods causing maternity death on high ratio, the studies done on abortion system clearly proves the fact of unworthy legislation. One of the issues, a study done by the 'Abortion Assessment Project', concluded that the 56% of abortions are unsafe in India, it also violates the fundamental and human rights of the women in India.

1. The constitutional aspect of MTP, 1972

The constitution as in Indian history has played a huge role in governing rights of the individuals, India being a society where institutions are based on community rights, the constitution comes in the picture where it comes on the individual right of a person, the law concern also having the same effect

violates the individual rights of women such as,

1.1. Article 14, Right to Equality

Maneka Gandhi v. UOI^v idea of 'intangible differentia' that is, reasonable classification was explained, where it was confirmed classification made in legislation should meet the reasonability test, that it should not be arbitrary and cause some infringements to the fundamental right of the individual, the class created in the act of married and unmarried women does not stand the reasonability test, it violates the right of unmarried women of equality excluding them from the right of abortion under section 3(2), explanation 2 which does not provide right to unmarried women discriminating them and violating the rights guaranteed by the constitution.

1.2. Article 21, Right to Life and Personal Liberty

In **K.S. Puttaswamy v. UOI**^{vi}, the supreme court explicitly held that the privacy is the fundamental right under the article 21 of the constitution which confirms autonomy, dignity the important aspects of privacy, integrated all together, the act also violates this right of the women as it does not give choice to women in India to abortion, which interfere their autonomy on their body and health as well. In, **State of Punjab v. M.S. Chawla**^{vii}, it was held that the right to health is the fundamental right under article 21, but the act also violates it as it does not confer right of abortion under section 3 to unmarried women who also suffer from mental illness due to unwanted pregnancy which risk their mental status. **Anil Kumar Sharma v. Dr. Mangla Dogra**^{viii}, the Supreme Court refused to interfere in a decision of the Punjab and Haryana High Court which had held that a husband is not entitled to damages from his wife or her doctor on account of the wife's



decision to terminate a pregnancy without his consent.

2. The Threshold of 20 weeks and after intervention of courts

The scope and evolution in technology have led a new dimension in abortion system, as the practitioners are well able to terminate the pregnancy even at the stage of 24 weeks, but India not recognizing such advancement has kept the barrier of 20 weeks causing issues to minor and later stage difficulties in pregnancy to adult women, the fact that the minor not having developed body shows the sign of pregnancy late, crossing the limit of 20 weeks, the intervention of the court, that is to seek court's permission to abort after 20 weeks creates a huge issue as court generally rejects that bound by the law under MTP Act, the long going and stringent procedures of the court is also a huge drawback even when the plea is filed before 20 weeks, India has an almost 40% situation under this causing complexity in physical and mental conditions.

3. The Indian Penal Code, does it criminalize abortion?

It's always been a misconception by the medical practitioners with laws under IPC, 1860 that it criminalizes the abortion totally, however it is to be noted that the section 312 and 315 makes an exception of good faith, section 313 provides the exception of the consent of women, the law provide miscarriage as an offence but only if done in malafide intentions to cause death to child or mother, it does not make it crime per se the intention or purpose remains to protect women or child but not to avoid abortion with consent of women or guardians, moreover the MTP itself creates an exception under section

3 clause 1 that any act done under the act does not affect the offences under IPC.

INTERNATIONAL AND REGIONAL CONVENTIONS

The international and regional conventions such as ICCPR, CEDAW and UDHR, to which India is signatory, has laid down the foundations for the courts in India, especially in matters of rights such as fundamental and individual rights to be recognized by the state in their domestic laws, the conventions define the rights of women in relation to their reproductive rights and about the privacy and autonomy towards life and physical state too.

1. **Universal Declaration of Human Rights (UDHR)**, Article 1^{ix}, 'all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'

2. **Article 14 Health and Reproductive Rights (MAPUTO PROTOCOL)^x**

States Parties shall ensure that the right to health of health of women, including sexual and reproductive and promoted,

This includes,

The right to their fertility;

The right to decide whether to have children, the number of children and the spacing of children;

3. **International covenant on civil and political rights (ICCPR)**

The human rights committee held that the access of abortion is the right of every women and restriction to this causes the violation of her right to privacy and autonomy over her reproductive right, where the violation of



article 17 of ICCPR convention was confirmed^{xi}

4. Convention on Elimination of all forms of Discrimination against Women(CEDAW)

Article 12 of the convention provides for the protection and safeguards to women in terms of pregnancy, granting free services to them, which also includes the right to access free abortion.

The policies under these conventions binds the country to adopt through their policies and laws, however, the court has found a way to impose such duty on government but the policies laid always lack the adherence to such conventions which should be followed accordingly.

SOLUTIONS NEED TO BE ADOPTED

1. Proper Legislations and Policies

1.1.The MTP act being the most relevant and regulating act should be reformed, abortion by request and on economic crises should be brought, with some limits confirming right of privacy, right of choice, right to health of women, proper policies and laws need to be drafted for administration abortion across the country and should be in consistent to the WHO guidelines as much as possible for the government.

1.2.The POCSO Act, the Center of Reproductive rights, India, suggests to amend section 19(1), ensure that pregnant adolescents can access abortion without risking their confidentiality being violated by mandatory reporting requirements stands out valid as it takes a lot of time sometimes crossing the

threshold of 20 weeks and should be amended.

1.3.Reforms in Prohibition of Child Marriage Act, the act though prohibits child marriage but with certain exceptions, that marriage is sustainable with the consent of child or guardian, which rapture the purpose, the reason of being child marriage conducted are because it is mostly done by guardians due to social norms and other reasons that is poverty and other

2. Lack of public awareness , reforms, education and family planning

The lack of public awareness and illiteracy is one of the biggest cause for such situation in the country, better family planning and awareness at small scale levels such as panchayats and 'Aganbaadi' should be performed. Access to free counseling to people should be given regarding the pregnancy as essential functions of these institutes.

3. Medical management and administration

The Guidelines provided by the WHO in relations to pre- abortion, abortion and post-abortion should be followed in a wide sense, in India there has been a great initiative and awareness program performed in terms of girls education, child discrimination, but abortion or pregnancy has remained untouched, the need to study done by medical professionals and awareness program by them is must in their study course.

CONCLUSION

The study and research done on the abortion system considering laws and policies adopted in Indian context present the state of country



as high need reforms and transformation in relation to not only policies but administration, it is found that the ratio of maternal death in India is less a compared to other developing nations but is still high as 56% of women are affected, the main reasons are the lack of awareness. medical support, societal norms depriving rights of women to terminate pregnancy but weak laws is the fact need to be taken care of, the MTP Act, abortion regulating act does not stands with the human rights or even fundamental rights of women of right of equality it does not provide right to unmarried women and right to healthy life, right to privacy or autonomy to their reproductive rights recognized under constitution of India and other international laws to which India is party, intervention of court has also become a huge drawbacks to most cases as the court itself does not consider the right of abortion as human right

or choice but are bound by laws of MTP Act, adolescence pregnancy is another main reason for death of women beside unsafe and alternate methods of abortion by people as 30% of women are minor and die due to inability to bear child due to underdeveloped body or need consent of husband or guardians to terminate pregnancy but are not given due to stereotypes or social understanding of abortion as sins in many religions. The solutions with all these all starts with a strong and practical law and policies striking all the old thought violating human rights of women, providing better schemes on abortion rights, addressing issues related and awareness programs.

ⁱ<https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>

ⁱⁱ www.un.org, Abortion Policies and reproductive health around the world

ⁱⁱⁱ <https://www.ndph.ox.ac.uk/publications/100508>

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[https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(19\)30111-7/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(19)30111-7/fulltext)

^v AIR 1978 SCR (2) 621

^{vi} AIR 2017 10 SCC 1

^{vii} AIR 1997 SC 1225

^{viii} ILR (2012) 2 P&H 446

^{ix} <https://www.un.org/en/universal-declaration-human-rights>

^x Protocol to the clean African charter on human and peoples right on the rights of women in Africa

^{xi} KL v. Peru, CCPR/C/85/D/1153/2003