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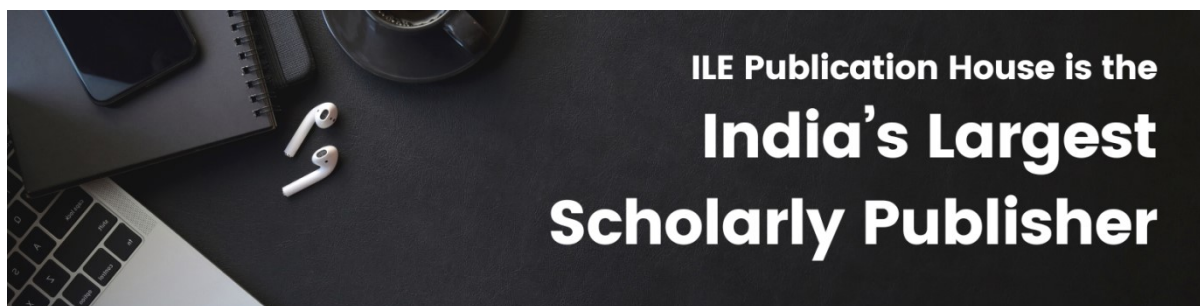
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LEGALITY OF ABORTION

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ABSTRACT

Abortion is still one of the most contentious and controversial topics within the area of reproductive rights and healthcare. Laws regarding abortion in India have changed substantially over time, based on changing social attitudes, advances in medicine, and changing legal conceptions.

Medical Termination of Pregnancy Act, 1971, is the law that regulates abortion in India. It allows termination of pregnancy in certain circumstances like danger to the life of the mother, serious foetal abnormalities, or failure of any contraceptive used by the couple. These provisions are made to protect women's health while keeping in view the intricacy of reproductive choices.

The MTP Amendment Act, 2021, made significant reforms by increasing access to abortion services. Among the most significant reforms is the increase in the gestational limit for abortion from 20 to 24 weeks for specific categories of women, such as survivors of sexual assault, minors, and situations involving foetal abnormalities. The amendment is a progressive step in acknowledging women's reproductive autonomy.

The Supreme Court of India in its path-breaking verdicts has been at the forefront in the interpretation and consolidation of abortion rights. The Court has held that right to decide in regard to one's body comes under the purview of the constitution Article 21.

Around the world abortion and laws and policies differ but the central issue remains the same balancing a woman's right to autonomy, privacy, and health with moral, ethical, and societal considerations.

This paper seeks to analyse the historical development, existing legislative standards, and social effects of laws on abortion with special reference to India's progress toward inclusive and safer reproductive health policies.

Keywords: Termination, foetal, gestation

I INTRODUCTION

Abortion is the expulsion or removal of a foetus or embryo from the womb, leading to, or brought about by its demise. The process can happen naturally as a miscarriage, or artificially caused with the help of chemicals, surgery or otherwise. Abortion usually means a procedure induced at any stage of gestation. The right to procreate is a right provided to women from all countries. But when she is compelled to undergo abortion, her right is being violated.

Abortion is pregnancy terminated intentionally. Whether all those women who are carrying their child have right to abort or not was a serious matter and a contemporary problem. Exercising ones right to abort forcibly varies relatively less from ones free will to abort. When a woman undergoes abortion with her free will but without the consent of her husband then she experiences physical and mental shocks from husband and in-laws that devastates her life. There are 2 main types for abortion:

- Spontaneous abortion

- Induced abortion

Spontaneous abortion is when abortion occurs during pregnancy due to any complications.

Induced abortion, is again sub-divided into Therapeutic abortion and Elective abortion.

Therapeutic abortion is done to save mothers' life or where the brain of foetus is underdeveloped. Elective abortions are done for any other reason except medical.

Abortion is only justified under specific conditions:

- Personal physical or mental illness on the part of mother.
- Sexual assault or rape
- In case of still child or functional disorder of the child.

In most countries, including India, early abortion legislation has been extremely restrictive, punishing the procedure except in narrowly defined cases like threats to the life of the mother.

But developments in medical science and increasing awareness of women's autonomy have prompted far-reaching legal changes designed to make safe access to abortion available and cut maternal death due to unsafe procedures. Following a huge argument and conflict Medical Termination of Pregnancy Act, 1971 was established to pregnant women in the event of abortion. Recently a significant amendment occurred in 2021 under the MTP Act time limit for abortion. This changing legal scenario highlights the contemporary international debate between preserving fetal rights and preserving women's health, privacy, and choice freedom.

II Evolution of Abortion Laws

Abortion law has its roots traced through Hindu scriptures such as Vedas and Upanishads which contain moral deliberations regarding abortion wherein Rig Veda and Kaushitaki Upanishad mention abortion as a grave ethical

offense. Subsequently, Kautilya's Arthashastra lays down punishment for inducing miscarriage, indicating concern of the state for loss of the fetus under certain conditions.

Abortion was later mainly regulated by British colonial-era legislation, which criminalized the practice except when it was considered to be required in order to save the life of the woman. During Colonial Period Abortion was illegal act under Section 312 of IPC, 1860 criminalizes voluntarily causing a woman to miscarry unless in good faith done for saving the woman's life. A woman who induces herself to abort is also liable under this section. However, these laws were not actively enforced throughout the region and cultural practices had a large influence on the act.

India's path towards abortion post-independence followed a transition to the modern age. Abortion became a matter of concern in India to enhance public health and ensure women's well-being. Abortion was neither legalized but rather criminalized under section 312 of the Indian Penal Code prior to 1971.

To respond to these legal and medical concerns, the Government of India established the Shantilal Shah Committee in the mid-1960s to enquire into the requirement of regulations of abortion. MTP Act, 1971 was a crucial landmark in India's, establishing a framework for legalizing abortion under certain conditions.

In 1971, the Medical Termination of Pregnancy Act was added to the constitution. The Right to abortion may fall under the Article 21, if interpreted. Article 21 prescribes the Right to life and personal liberty. It can also be interpreted that a woman, having been granted such a right, may enjoy her personal liberty and modify her body in any manner possible. She could do anything to her body, as per her own needs. She completely owns her body, and her choice must be absolute and final, if she desires to go on with her pregnancy or not.

The Supreme Court has served notice to the center for decriminalization of abortion and

reaffirmation of the absolute independence of women to take decision- related to right of reproduction.

X v. Principal Secretary¹ This is a landmark case talking about the right of an unmarried woman to exercise reproductive autonomy.

In the statement of KS Puttaswamy v. Union of India², the Court concluded that "woman's freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy." The Court has reaffirmed in the aforementioned case that statutory right of woman to get pregnancy termination under the MTP Act is analogical to the constitutional right of making the reproductive choices under Article 21 of the COI.

Article 21 of the Constitution identifies and safeguards a woman's right to perform termination of pregnancy if her mental or physical well-being is jeopardized. What is significant is that it is the woman herself who alone can exercise authority over her body and make the final decision regarding whether she should have an abortion. Prior to the MTP Act, abortions were done illegally by untrained people under unsanitary conditions, resulting in excessive maternal morbidity and mortality. The MTP Act legalized abortion under certain conditions by registered medical practitioners, which decreased these unsanitary procedures significantly.

III Grounds for abortion

After enforcement of MTP Act, 1971 the system of abortion became strengthened. Abortion in India takes place only in some grounds as defined under MTP Act, 1971.

Abortions can be performed only by a registered medical practitioner. Section 2 (d) defines who is a registered medical practitioner. Registered Medical Practitioner means a medical practitioner who holds any recognized medical qualification Sec. 2 of the Indian Medical Council Act, 1956.

Section 3 of MTP Act, states when can pregnancy be aborted:

- Registered Medical Practitioner shall not be liable for any offence under IPC or otherwise under any legislation at the time of at the time of medical intervention.

- Gestational age has not exceeded 12 weeks.

- If continuation pregnancy may cause serious harm to the physical or mental well-being of the woman.

- Whenever there is high risk that the child born will be afflicted with severe physical or mental defects.

- WHERE if pregnancy has resulted from rape of women, then it can be regarded as good reason for abortion because it must have caused mental trauma to pregnant women.

- Whenever the girl is 18 years or insane, then pregnancy cannot be made void without guardians written consent.

A (Mother of X) v. State of Maharashtra³, the case was of a fourteen-year-old minor who was a victim of sexual assault and wanted to abort her pregnancy. The High Court had also refused the application on the basis of statutory limitation of 24 weeks for pregnancy, which was crossed in this case. The Supreme Court, on constituting a new medical board, held that the continuation of the pregnancy would harm the physical and mental well-being of the minor. It thus dismissed the High Court's order and permitted the termination.

These are the circumstances under which pregnancy is to be terminated. Not every woman can invoke privilege for termination as a right. Married girl can terminate her pregnancy subject to the condition but her consent is most important. Except pregnant women all consent is irrelevant.

Keeping in mind the circumstances of women MTP Act was reformulated in 2021 where the gestation period for performing the abortion was raised from 20 weeks to 24 weeks in the case of pregnant women. This act also permitted unmarried women to end their pregnancy as a consequence of contraceptive

failure which was previously applicable only to married women. The personal information and identity of the woman considering abortion are confidential and cannot be divulged except to the authorized individuals as required by law. The amendment sought to expand access to safe abortion services and enhance women's reproductive rights, dignity, autonomy, and confidentiality.

The sex-selective aborting of female foetuses occurs most frequently where male children are more desired than female children, particularly in sections of East Asia and South Asia. This cannot serve as a cause for abortion.

IV INTERNATIONAL COMPARISON

Abortion legislation worldwide is an intricate confluence of moral, social, legal, and religious values. Every country's attitude towards abortion depends on its history, cultural values, and political culture. Some nations follow a liberal policy that acknowledges a woman's autonomy and reproductive rights, whereas others place limitations based on ethical or religious grounds.

FRANCE has reserved a trip by signing into law a bill to codify abortion rights in France's constitution, becoming the sole nation to clearly promise a woman's right to voluntarily end a pregnancy. The passed bill modifies Article 34 of the French Constitution, clearly reading that "the law determines the conditions by which the freedom of women to have recourse to an abortion, which is guaranteed."

USA The United States of America women did not previously have the luxury to abort their children. Following the historic ruling *Roe vs Wade*⁴, an unmarried and pregnant woman from Texas, Norma McCorvey and the plaintiff too, applied for an abortion. However, she was refused under Texas abortion statutes. She filed a federal challenge to the Texas statute as unconstitutional afterwards. *Roe* started contesting that the Texas abortion legislation which is depriving her of continuing with her abortion is infringing upon her right to privacy

and that specific legislation needs to be considered. The Court, in a 7-2 majority consensus agreed on *Roe's* concept but however stated that the states' sole aim here is protecting the pregnant woman and the possible human life. The Court ruled that the foetus is not a human person who might be protected by the Constitution and hence legalized abortion. The Supreme Court ruled that the right of privacy inferred in the 14th Amendment safeguarded abortion as an essential right. But the government still had the authority to regulate or limit abortion access based on the gestation period. In another historic case that followed, *Planned Parenthood v. Casey*, the Supreme Court held that the very concept of "spousal consent" in context of abortion. The concept of a spousal consent would bind women even tighter, and it is viewed as an "undue burden" preventing women from pursuing abortion.

But in *Dobbs v. Jackson Women's Health Organization*⁵, there was a sudden change that overruled the above two cases. In 2018, the Mississippi legislature prohibited abortions after 15 weeks of pregnancy except for narrowly defined medical emergency or severe fetal abnormality. The U.S. Supreme Court reversed *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992)⁶. The Court held that the Constitution does not include a right to abortion. Thus, the authority to prohibit or regulate abortion is given back to the states. *Roe v. Wade* was entirely reversed that states Abortion is no longer a protected constitutional right. So, The U.S. Constitution does not protect abortion rights anymore. The protection which existed under *Roe v. Wade* was terminated by the 2022 *Dobbs* ruling, turning over the regulation of abortion as a state matter instead of a constitutional right.

UK Abortion is regulated under the Abortion Act, 1967. The Act permits therapeutic abortion until 24 weeks. But if there is a serious threat to the health of the pregnant woman or if there are any foetal abnormalities, there is no time limit. For an abortion to be performed, the opinion of

one or more registered, licensed physicians is considered, to check whether there exist any legitimate medical reasons to proceed with the abortion. But practically, this is guaranteed by the Department of Health, that the physicians approve abortions without authentic medical reasons, where there exists an occurrence of other authentic reasons.

V IMPACT IN WOMEN HEALTH

Following an abortion, most women have short-term physical symptoms like cramping, bleeding, and fatigue, as well as possible emotional and psychological impacts. Most side effects are short-term, although there are risks for more severe complications like infection or complications related to future fertility. Most women want and go on to have future pregnancies after they have had an abortion, and it is therefore important to call a doctor immediately for signs of excessive bleeding, severe pain, or fever.

Unsafe abortions are one of the key public health issues in India. Unsafe abortions account for the third highest cause of maternal deaths in India, with almost eight women dying daily from abortion-related causes, as reported by the United Nations Population Fund State of the World Population Report 2022. Poor women and unmarried women lack access to safe medical facilities and suffer social stigmatization, thereby turning to risky or illegal means of abortion.

Physical health hazards of unsafe abortion are incomplete abortion, haemorrhage, infection, perforation of the uterus, and damage to genital and internal organs resulting from inserting harmful materials into the anus or vagina. When abortion is unsuccessful, children born after unsuccessful abortion may have digit or limb defects and other congenital disorders, although some babies can be delivered without defects.

In accordance with the National Institutes of Health (NIH), spontaneous abortion, also referred to as miscarriage, is the spontaneous

death of a fetus prior to 20 to 24 weeks of gestation. A number of medical studies have indicated that induced abortion poses no risk of increased spontaneous abortion during subsequent pregnancies. The majority of women undergoing abortion are later able to sustain healthy pregnancies without complications.

Abortion can also be a trigger for a spectrum of feelings, including anxiety, sorrow, guilt, or confusion. Every woman's emotional response is unique, and most of the time these feelings subside as they heal and are supported. Grief and guilt can be temporary for some women and are normal reactions, which need to be dealt with care and guidance.

Efforts must be made to provide women with safe and legal abortion services without putting them through unnecessary hurdles or stigma. This involves increasing abortion facilities in urban and rural areas, educating healthcare providers to provide safe reproductive care, and raising awareness of women's legal rights under the Medical Termination of Pregnancy (MTP) Act. In doing that, India can avoid unsafe abortions, lower maternal deaths, and ensure women's right to health, dignity, and reproductive self-determination.

VI CONCLUSION

Abortion is a multifaceted and complex phenomenon that involves legal, medical, ethical, and religious aspects. From the medical point of view, abortion is a safe intervention if done properly under adequate medical care, although risk rises with gestational age and is contingent upon the quality of healthcare and the regulatory framework. Ecclesiastically and ethically, there are different perspectives for when the fetus acquires the right to life—some faiths allow abortion only to preserve the mother's life, while others are more concerned with the woman's right to body autonomy and individual choice. Comparative examination of abortion laws in the USA, UK, and India brings out the fact that Indian laws, progressive as they are in some ways, still place some

restrictions on a woman to fully own her reproductive rights. Significantly, the legal status of the unborn child is not defined under Indian law, leaving the legal interpretation of fetal rights in a state of uncertainty. The development of the law on abortion in India, specifically through the Medical Termination of Pregnancy (MTP) Act, shows a gradual shift from the restrictive provisions in the colonial period to a health-centered and rights-sensitive approach. Amended provisions extending the limit in gestation and extending grounds for termination evidence growing acknowledgement of the autonomy of women and the complexity of reproductive health. Effective implementation and popularisation are still major issues, however. In comparison, international legal frameworks still struggle to find the balance among moral, ethical, and societal interests while ensuring women's health and privacy. The influence of abortion legislation on women's well-being is immense, as liberal and well-regulated access to abortion has been proved to save lives and safeguard physical as well as mental health. Finally, legality of abortion needs to transcend the definition of the right to abort a pregnancy; it needs to be an expression of a wider commitment to women's dignity, equality, and reproductive autonomy. Guaranteeing ongoing legal improvement, rigorous public education, and accessible health services is necessary in order to make the right to safe abortion a universal reality for women, not an amenity reserved for select women.

ENDNOTES

1. X v. Principal Secretary, 2022 SCC OnLine SC 1321
2. KS Puttaswamy v. Union of India, (2017) 10 SCC
3. A (Mother of X) v. State of Maharashtra, (2024) 6 SCC 327
4. Roe vs Wade, 410 U.S. 113 (1973)
5. Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022)
6. Planned Parenthood v. Casey, 505 U.S. 833 (1992)