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"Understanding Abortion"

Rewa Sachdeva
Amity University,
NOIDA, U.P.

ABSTRACT

India sees around 15.6 million abortions annually, with a significant portion resulting in unsafe practices that increase maternal mortality and morbidity. This troubling situation stems from a general lack of awareness regarding established legal pathways. 'Prior to the enactment of the Medical Termination of Pregnancy Act in 1971, all forms of abortion were deemed illegal under sections 312 to 316 of the Indian Penal Code, categorized as deliberate miscarriages. Despite the legal exceptions, societal disapproval persists. The enactment of the Medical Termination of Pregnancy Act in 2021 marked a step forward, although there are still deficiencies in healthcare services.' This study delves into abortion laws in India, providing recommendations for legislative enhancements to empower women's reproductive rights.

INTRODUCTION

Exploring the complex landscape of women's autonomy mirrors the complex network of societal dynamics, posing a challenge for legislators to uphold the core tenets of the Indian Constitution—equality and liberty—while maintaining its integrity. The debate surrounding abortion is rich with discussions on morality, ethics, and religious beliefs. When a woman decides to undergo an abortion, she faces scrutiny from society and navigates a convoluted legal landscape fraught with ambiguity. 'In 1971, the enactment of the Medical Termination of Pregnancy Act, influenced by the Abortion Act of 1967 in the United Kingdom, represented a pivotal moment. As of 2021, the Medical Termination of Pregnancy Act outlines the legal parameters for abortion, but there remains a need for a more thorough legislative framework to address existing gaps. As per the Indian Penal Code of 1860, abortion is deemed a criminal offense for both the woman and the physician, except in situations where the woman's life is in danger.' Section 312 is very extensive, as it prohibits abortion and assigns liability for a woman's miscarriage, even when the procedure is necessary to save her life. Legal protections may cover terminated pregnancies due to intentional harm or medical negligence, but the absence of differentiation between desired and undesired pregnancies poses a major barrier to obtaining safe abortion services.[1]

Understanding Abortion

"The World Health Organization (WHO) defines abortion as the cesarean section performed prior to the 20th week of gestation. From medical procedures to natural miscarriages, it covers it all. Legally induced abortions are defined by the Centers for Disease Control and Prevention

[1] Ara, Irfat, Mudasir Maqbool, and Imran Gani. "Reproductive Health of Women: implications and attributes." International Journal of Current Research in Physiology and Pharmacology (2022).

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(CDC) as medical procedures carried out by registered medical professionals in accordance with state laws in order to end an undesired pregnancy and prevent the delivery of a child."

SOCIETAL STIGMA

When examining the impact of abortion on individuals, it is evident that the stigma associated with the procedure is deeply ingrained in our society. Abortion stigma refers to the prevailing notion that abortion is considered immoral and socially unacceptable, leading to negative perceptions and behaviors regarding discussions about abortion. Abortion involves a complex decision-making process, and women and their supporters often encounter stigma and discrimination, which can hinder their access to necessary healthcare.

Even though abortion is widely practiced today, it has been a part of human history for a long time and still faces social criticism. The intricate relationship between religion and ethical debate is evident in the wide range of religious perspectives on abortion. Classical Hindu texts condemn abortion, considering it a breach of familial and social duties and a disrespect to the unborn. From this perspective, the decision to have a child aborted is seen as more than just a personal choice; it is viewed as a collective responsibility tied to the preservation of family lineage and community cohesion.

Considering the legality of abortion can vary based on specific circumstances, Islamic perspectives on the topic involve a complex web of theological interpretation. Despite the general prohibition of abortion in Muslim law, certain schools permit it within specific gestational periods, emphasizing the sanctity of foetal life. As the pregnancy advances, the moral significance of the act intensifies, even though there are varying viewpoints on the matter.[2]

Human personhood is considered to start at conception, leading to a strong emphasis on the sanctity of life in Christian traditions such as Orthodox Christianity and Roman Catholicism, which strictly prohibit abortion. In situations where all other options for foetal preservation have been considered and ruled out, there is a provision that permits abortion in rare cases where the mother's life is in immediate danger and takes priority over the well-being of the foetus.

Examining the abortion debate reveals how individuals from various religious backgrounds value human life and struggle to navigate moral dilemmas. Identifying the foetal personhood and the ethical weight of choices regarding pregnancy termination are shared themes despite differing theological beliefs.

Obstacles to accessing compassionate and nonjudgmental healthcare are influenced by the complex interplay of abortion stigma with societal norms rooted in religious and ethical beliefs. We should encourage discussions centred on empathy, compassion, and a commitment to

[2] Joshi, Vidisha. "The Tussle between Woman's Right to Reproductive Choices and the State's Interest in Regulating Abortions: A Comparative Analysis of Medical Termination of Pregnancy in India and the USA." Issue 4 Int'l JL Mgmt. & Human. (2021).

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honoring the autonomy and dignity of all individuals while navigating the complexities of abortion conversations.

HISTORICAL BACKGROUND OF ABORTION LAWS IN INDIA

Delving into the history of abortion law in India reveals its roots in the 19th-century British legal system, which was mainly regulated by the "Indian Penal Code of 1860 and the Code of Criminal Procedure of 1898 until 1971. Back in those days, abortion was considered a criminal act for both the mother and the person performing it, unless it was done to save the woman's life. Delving into the historical context highlights the development of India's abortion laws, which have their origins in colonial legal principles."

Examining global legal changes favoring medical termination of pregnancy, the Shantilal Shah Committee conducted a comprehensive analysis of abortion, considering social, cultural, legal, and medical aspects. Considering the importance of reducing maternal morbidity and mortality, the committee supported the legalization of abortion for compassionate and medical reasons. Delving into a comprehensive report, it outlined different situations that could justify the legal termination of pregnancy, with a focus on safeguarding the life of the pregnant woman and avoiding serious physical or mental harm.[3]

Delving into the history of legislation, the implementation of the Medical Termination of Pregnancy Act, 1971, represented a crucial development in India's legal framework, reflecting the United Kingdom's Abortion Act of 1967. Unveiled in Parliament in 1970 and officially approved in August 1971, the act marked the beginning of a fresh chapter in reproductive healthcare, put into action on April 1, 1972. Geared towards overseeing pregnancy terminations by registered medical practitioners, the law was created to protect women's health and autonomy.

India's dedication to universal reproductive health services led to the revision of the MTP Act 1971, a significant effort to enhance women's empowerment with comprehensive abortion care. The implementation of the "Medical Termination of Pregnancy (Amendment) Act of 2021" reflects a significant step forward in achieving widespread access to safe and legal abortion services. Through expanding provisions for medical, eugenic, human, and social reasons, the revised act highlights India's commitment to providing inclusive reproductive healthcare for all its citizens.

"MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021"

The "Medical Termination (Amendment) Act of 2021" marks a crucial shift in the realm of reproductive healthcare by updating the influential MTPA of 1971 to align with contemporary conditions and perspectives. The amendments focus on a key provision in Section 3(2c & d) of the MTPA 2021, which extends the upper gestational limit from 20 weeks to 24 weeks in

[3] Jain, Dipika, and Payal K. Shah. "Reimagining reproductive rights jurisprudence in India: Reflections on the recent decisions on privacy and gender equality from the supreme court of India." Colum. J. Gender & L. 39 (2020).

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specific situations. Interestingly, the term 'married woman and her husband' has been updated to 'woman and her partner,' a deliberate move to reduce the societal judgment linked to abortion for unmarried women.

The criteria for women to be eligible for MTP for a period of 24 weeks are outlined in Rule 3B of the MTP Rules, 2021. This all-encompassing framework encompasses survivors of sexual assault, minors, pregnant women going through marital status changes, women with physical or mental disabilities, individuals affected by fetal malformation, and those impacted by government-declared humanitarian crises or emergencies.

When faced with pregnancies lasting between 20 and 24 weeks, it is necessary for a woman to seek advice from at least two registered medical practitioners. Considering the significant risks involved for the pregnant woman or the potential health issues for the child, their actions are guided by genuine concern.[4]

Delving into the parameters that outline severe harm to mental health emphasizes the complex connection between reproductive decisions and psychological well-being. Instances like pregnancies resulting from rape or contraceptive failures highlight the intricate complexities within this field.

When the 24-week period has passed, the state government or union territory requires the formation of a 'Medical Board' with specialists in gynecology, pediatrics, radiology, and related fields. Examining cases involving significant fetal abnormalities, the board serves as a bastion of medical evaluation and ethical reflection.

As per Rule 3A of the MTP Rules, 2021, the Medical Board has the power to decide on extending the MTP beyond the 24-week period. Considering fetal viability and safety concerns for late-term procedures, the board members' decisions have significant implications for ethical conduct and maternal health.

Central to the board's duties is a comprehensive evaluation of the pregnant woman's condition, along with offering counseling and ensuring informed consent. Over the course of five days, the governing body must carefully balance ethical considerations with medical necessity, ensuring that each decision prioritizes reproductive autonomy and maternal well-being.

Examining the regulations set forth in the Medical Termination (Amendment) Act of 2021 reveals their critical role in overseeing and executing MTP processes, emphasizing safety, confidentiality, and expert knowledge. Section 4 of the legislation outlines the requirements necessary to establish a safe environment for MTPs. It states that the sites must be approved hospitals sanctioned or established by the government, or endorsed by district-level committees (Form A & B). The district level committee, chaired by the Chief Medical Officer or District

[4] Sen, Gita, Aditi Iyer, Sreeparna Chattopadhyay, and Rajat Khosla. “When accountability meets power: realizing sexual and reproductive health and rights.” International Journal for Equity in Health 19 (2020).

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Health Officer, must have at least three and at most five members, as stipulated by the government.[5]

This legislation guarantees the safeguarding of the sacred principle of confidentiality by shielding the identity and personal details of women who have undergone pregnancy terminations, as outlined in Section 5A. If this provision is violated, it may result in imprisonment, fines, or both, unless permitted by current laws.

The safety regulations outlined in the legislation are clearly defined for every trimester and procedural situation. Highlighting the importance of gynecological exams and emergency supplies like sterilization and resuscitation tools in the first trimester of pregnancy underscores the crucial need to be prepared and capable of immediate action. Ensuring the efficiency of procedures and the health of patients necessitates having authorized medications, surgical tools, and anesthesia equipment ready by the second trimester of pregnancy.

Following the 24-week mark, infrastructure expansion is essential to accommodate more intricate procedures, necessitating specialized equipment, blood reserves, and ultrasound-guided interventions. These specifications emphasize the growing complexities involved in late-term abortions, requiring greater precision and resource management.

It is crucial for the successful implementation of MTP that all procedures are carried out only by Registered Medical Practitioners. Following regulatory guidelines and the Indian Medical Council Act of 1956, these individuals are identified by their registration status, possession of recognized medical qualifications, and proof of required experience or training in obstetrics and gynecology.

By incorporating medical standards, ethical considerations, and procedural imperatives, the act showcases India's commitment to protecting the well-being, independence, and dignity of women seeking reproductive healthcare.[6]

UNSAFE ABORTIONS

Before the MTP Act was implemented, India saw around 5 million pregnancy terminations annually, with 3 million being done secretly. It is evident that around one in seven pregnant women in India opt for unsafe abortion methods carried out by inadequately trained practitioners, such as unskilled physicians, paramedics, nurses, and midwives without essential expertise. This unfortunate situation has led to higher rates of illness and death among pregnant women and their newborns.

[5] Malhotra, Anju, Laura Nyblade, Sulabha Parasuraman, Kerry L D MacQuarrie, Namita Kashyap, Sunayana Walia, Manu Badlani, Pranita Wagh, Firdoaus Jahan, Ashwini Yelkar, Veena Dalvi, Rashmi Soni, Rekha Deshmukh, Bharti Kashyap, Rekha Nigam, Reena L Pal, Nidhi Namdeo, Nutan Patil, Vaishali Bhoyae, Kamlesh Mayekar and Ghanshyam Verma. "Realizing reproductive choice and rights: abortion and contraception in India." (2003).

[6] Saxena, Urshita. "Analysis of Abortion Laws in India: Need for Global March to Ensure Autonomy in Reproductive Choices." Issue 2 Int'l JL Mgmt. & Human. 4 (2021).

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According to the World Health Organization (WHO), unsafe abortion refers to terminating unintended pregnancies without proper expertise or in substandard medical settings, or both. Every year, over 5 million women globally need to be hospitalized to treat complications related to abortion, such as hemorrhage and infection. These complications result in maternal mortality, affecting the well-being of 220,000 children globally who do not have access to maternal care.

When examining the consequences of unsafe abortion procedures, it is evident that sepsis, infection, genital trauma, necrosis of intestinal tissues, and hemorrhage are significant factors contributing to mortality. Long-lasting health effects have been documented, including impaired wound healing, infertility, and urinary and fecal incontinence resulting from internal organ trauma caused by vesicovaginal or rectovaginal fistulas, as well as the necessity for bowel resections.

Furthermore, the repercussions go beyond just physical health, affecting productivity and mental well-being, encompassing various aspects of the negative impacts of unsafe abortion practices. These customs place a substantial weight on women, their families, and the overall public health system. Certainly, the financial and logistical burdens of emergency post-abortion care are substantial for healthcare systems. These requirements involve the need for trained medical staff, blood products, antibiotics, oxytocics, anesthesia, and surgical centers. Furthermore, the focus that could be shifted away from other important patient requirements is exacerbated by the urgent circumstances at play. There are numerous interconnected factors that contribute to the high rate of unsafe abortions in India, shaping a complex socio-medical environment.

Examining social distinctions reveals that abortion is often seen as a stain on one's character and societal norms. Within this societal context, women considering ending a pregnancy encounter ostracism and moral condemnation. Exploring the topic of abortion can lead to social judgment, unfairly branding women as morally deficient or careless.

There is a widespread lack of understanding about abortion laws in India, leading to the use of dangerous methods to end pregnancies. Delving into the intricate details of women's legal rights can have a profound impact on their healthcare choices and access to safe abortion services. Issues can arise when enforcement methods do not align with formal laws, impacting women's access to safe and legal abortion services.

Doctors who are allowed to conduct abortions must meet strict qualifications, which adds to the shortage of skilled practitioners in the medical field in India. Complicated termination procedures conducted by inadequately trained physicians contribute to a worrying mortality rate because of the shortage of highly skilled professionals.

Insufficient Healthcare Infrastructure: Inadequate financial resources allocated for medical infrastructure lead to equipment shortages, particularly in remote areas. Examining the

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situation where medical professionals face a shortage of resources, they may resort to using inferior equipment, potentially resulting in complications post-abortion.

Because of financial constraints, most people cannot access advanced medical facilities, so they resort to cheaper and often risky methods to end unwanted pregnancies. Financial constraints have a detrimental effect on both the pregnant woman's health and the well-being of the unborn child.

Tackling the intricate issues surrounding unsafe abortions requires a comprehensive approach involving legal changes, improvements in healthcare facilities, and collaborative efforts to eliminate the societal taboos related to reproductive health decisions.[7]

RIGHT TO REPRODUCTIVE HEALTH

Delving into the insightful analysis put forth by Justice D.Y. Chandrachud in the groundbreaking case of K.S. Puttaswamy v. Union of India, we find a deep exploration highlighting the importance of personal autonomy within complex social frameworks. Here's the gist: “The core choices about how to lead one's life are mainly impacted by the person, continuously molded by the prevailing social surroundings.” It is the state's duty to protect individual autonomy without enforcing specific rules.

Examining the Indian Constitution, Article 21 recognizes a woman's right to make decisions about her reproductive choices as a fundamental aspect of personal freedom. Delving deep into the subject, the exegesis covers a wide range of reproductive aspects, from procreation to abstention. The Sarmishtha Chakrabortty v. Union of India case highlighted the importance of a woman's autonomy in making decisions about her reproductive choices, emphasizing the significance of personal liberty and physical integrity.

When delving into the intricate debate surrounding abortion, the focus often circles back to the topic of fetal rights. It's important to acknowledge that the status of a fetus should not be considered higher than that of a conscious, living woman. International human rights law clearly states that personhood is not granted to an unborn entity until after birth, which means human rights cannot be attributed to them. The Santhi v. State of Kerala decision firmly dismisses the idea that fetal existence equals personhood. It confirms that constitutional rights are not granted to embryos.

This discussion transcends domestic law and reverberates within the prestigious chambers of international conventions. Examining the fundamental right to sexual and reproductive health, individuals have the freedom to make informed decisions about their reproductive health and bodily autonomy, free from coercion or discrimination, as acknowledged by the Committee on Economic, Social and Cultural Rights.[8]

[7] Unnithan-Kumar, Maya. “Female selective abortion–beyond ‘culture’: family making and gender inequality in a globalising India.” Culture, health & sexuality 12, no. 2 (2010).
[8] Patel, Tulsi. “Experiencing abortion rights in India through issues of autonomy and legality: a few controversies.” Global Public Health 13, no. 6 (2018).

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COMPREHENSIVE ABORTION CARE

Unsafe abortion-related fatalities and injuries remain a significant public health issue, impacting communities and families and leading to widespread distress. To promote safer pregnancies, it is essential for women to have access to secure abortion services and for both unsafe and spontaneous abortions to be promptly and competently managed throughout society within legal boundaries. In 2003, the World Health Organization (WHO) issued technical directives to enhance health systems' ability to deliver Post-Abortion Care (PAC) and Safe Abortion Care (SAC). These recommendations aim to support governments, planners, and service providers in upholding their commitment to women's health and rights. With a five-pronged international strategy, PAC aims to minimize the loss of lives and suffering resulting from unsafe and spontaneous abortions.

Investigating the problem of unsafe and incomplete abortions, along with the life-threatening risks they pose.

Exploring and addressing the various physical, emotional, and other needs of women is considered counseling.

Facilitating access to contraception and family planning services to prevent unintended pregnancies and regulate childbirth spacing.

Offering Reproductive and Allied Health Services, either on-site or by arranging seamless referrals to neighboring facilities.

Collaborations between communities and healthcare providers strive to decrease unsafe abortions and unintended pregnancies, allocate resources to promptly handle abortion-related complications, and ensure that healthcare services align with community needs and expectations.

Understanding the importance of Comprehensive Abortion Care (CAC), which encompasses safe induced abortion for legally sanctioned indications and all aspects of PAC, is crucial for decreasing maternal mortality rates.

Given the potential for exposure to contaminants during invasive procedures, patients, service providers, and support staff face the occupational risk of infection. Adhering to established protocols is essential to reduce potential risks. Following these guidelines involves utilizing appropriate protective gear such as masks and gloves, handling waste cautiously, and implementing preventive actions to prevent accidents. To prevent iatrogenic infections, it is essential to follow established protocols, use aseptic techniques, and perform pre-transcervical screenings or treatments for cervical infections.

Complications may occur from uterine evacuation procedures, so it's crucial for skilled practitioners to act quickly. While severe complications are rare, it is important to carefully monitor the patient after surgery for potential infection or bleeding. Ensuring uninterrupted access to emergency care is essential during the treatment process. Before directing the patient

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to more advanced referral services, which are utilized when the facility cannot offer the required treatment, the patient's condition needs to be stabilized.

Women must receive thorough self-care guidance after surgical procedures. Service providers should clearly explain the expected recovery time and warning signs of potential complications that need immediate attention. In addition, it is important to offer thorough education on post-abortion contraception and ways to avoid sexually transmitted infections. Scheduling a follow-up appointment within 10 to 14 days is recommended to evaluate the recovery progress.

CONCLUSION

Examining the gender equality movement in India reveals a notable advancement towards parity, providing women with access to services and opportunities equal to those offered to men in different areas. Yet, in the midst of all this advancement, there is a noticeable lack of conversation surrounding abortion, which is a crucial element of women's control over their bodies. Instead, societal discourse frequently obscures the matter by framing it as a debate on "foetal rights," which masks underlying attitudes towards premarital sex as taboo and stigmatizes women involved in it as morally compromised.[9]

As a keen observer, many women turn to secret abortions, caught in a cycle of secrecy that could harm their health. Tackling this challenge requires a new way of thinking, a detailed analysis of uncertainties, and the bravery to bring attention to women's difficult situations. Embracing a comprehensive perspective is essential to protect human dignity, prompting us to break free from indifference, defending the lives and fundamental rights of women.

Understanding the impact of abortion laws, especially the Medical Termination of Pregnancy Act (MTPA), requires a comprehensive approach that goes beyond traditional socio-economic factors. It is crucial for the government to allocate significant funds and conduct widespread educational campaigns to raise awareness among all segments of society. Furthermore, it is crucial to motivate women and healthcare providers to cultivate a safe and accessible environment for abortions.

Despite the significant challenges ahead, they can be overcome. By combining government efforts with community-driven actions, the social landscape in India has the potential to shift, leading to increased recognition of abortion as a valid decision.

Delving into the complex web of India's abortion laws sheds light on potential areas for future academic exploration. May it inspire ongoing exploration and thoughtful discussion, driving forward positive changes to completion

[9] Bhoite, Shivanjali. "Comparative Study of Abortion Law in India and USA." Dnyanamay Journal 3, no. 1 (2017).