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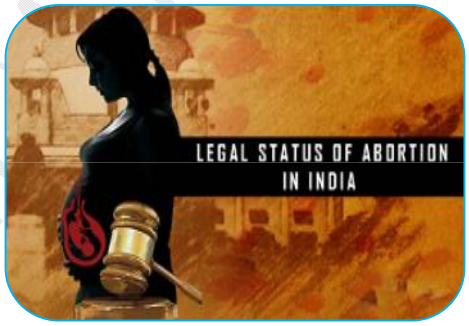
"LAWS RELATING TO CRIMINAL ABORTION IN INDIA AND ITS IMPACT ON WOMEN'S HEALTH: AN ASSESSMENT"

Dr. Jyothi Vishwanath[1] and Mrs. Jyothi K. M.[2]
[1]Assistant Professor , P.G. Department Of Studies And Research In Law , University Law College , Bangalore University , Bengaluru.
[2] Research Scholar , P.G. Department Of Law , University Law College , Bangalore University, Bengaluru.

"Just as a bird could not fly with one wing only, a Nation would not march forward if the women are left behind". The golden words of Swami Vivekananda state the importance of women in the world.

ABSTRACT:



Women occupy the highest position in the Indian society. The Vedas glorified women as the mother, the creator, and one who gives life. The status of women is still in question and also crimes against women are rising day by day. But the impression did not last long in the subsequent era many evil things were done to suppress her status. Over a period of time it was only theoretical but not implemented. The status of women is still in question and also crimes against women are rising day by day. One among it is Criminal Abortion. Although abortion services in India were liberalized more than three decades ago, access to safe services remains limited for the vast majority of women and restricted by the present laws.In this paper, the author has made an attempt to find out the acts which constitute the criminal abortion in India in spite of existing laws, and their effect on women's health. This paper also concentrates on the laws in connection to criminal abortion and the extent of influence on women's health.

KEYWORDS: *Indian society , women's health , Criminal Abortion.*

INTRODUCTION

Despite the liberalization of abortion services since the early 1970s, access to safe abortion services remains limited for the vast majority of Indian women, particularly in rural areas. An overwhelming proportion of induced abortions (6.7 million annually as per indirect estimate) take place inunauthorized centres, which provide abortion services of varying degrees of safety.[1] At the same time, in recent years significant changes in the abortion scenario have been taking place in the country, which have had wide ramifications.

Abortion is medically referred as a miscarriage of pregnancy. It is also an induced termination of pregnancy before 20 weeks gestation, which is considered nonviable. An adult woman requires no other person's consent except her own for the abortion of the fetus.

Abortion is legally defined as the expulsion of the fetus from the uterus (womb) at any time before its term of gestation is complete.

For practical purposes this must be reduced to emptying of the uterus prior to the time when the fetus is capable of survival; i.e., sometime between the twenty-fourth and the twenty-eighth week of the pregnancy.

For medico-legal purposes, abortions may be grouped into three classes; viz., spontaneous, therapeutic, and criminal. The former includes about two-thirds of all abortions. Studies have given an estimated that from 34 to 69 per cent of all abortions, with the lesser figure for rural and the higher for urban areas, were illegally induced. Others tend to a somewhat lower average figure, but even the most conservative reports do not estimate that over 70 per cent of abortions begin without artificial interference with the normal course of events.

METHODS BY WHICH CRIMINAL ABORTION MAY BE PERFORMED

Physical Methods - These may be attempted by the mother herself or by some other person. The procedures are intended to promote venous congestion in the pelvic organs in the hope that the interference with the circulation will initiate uterine contractions. They include extremely hot baths, severe or prolonged exercise, "manipulations and adjustments," and violence to the lower abdomen.

Chemical Methods - Drugs may be employed systemically or locally in the effort to empty the uterus. Frequently encountered groups include the purgatives, castor oil, croton oil, and aloes; the intestinal and pelvic irritants, oils of pennyroyal, tansy, savin, rue, etc., and the drugs which stimulate the muscle of the uterus to contract, including quinine, ergot, and pituitary extract. A fourth group of chemicals sometimes used by mouth are the true systemic poisons administered in the hope that the fetus will be less able to withstand the toxic chemical than the mother with consequent abortion of the dead or injured fetus but recovery of the mother.

Operative Methods - These are practically all attempted through the vaginal canal and are designed to expel the contents of the pregnant uterus either by mechanically dislodging or removing the fetus or by causing its expulsion by stimulating contraction of the uterine muscle.

MAGNITUDE AND CONTEXT

Official figures report that about 0.6 million induced abortions take place annually inIndia.Given that only approximately 10%of abortions are conducted by qualifiedproviders in approved institutions,and thatabortions taking place at registered facilitiesare grossly under-reported,thisrepresents only a fraction of the total number of induced abortions taking place in thecountry. Indirect estimates for the year 1991,using parameters arrived at on the basis of asmall-scale study conducted in 1966, projectthe number of induced abortions annually at6.7 million.

Estimates of the ratio of induced abortion derived from community-basedsurveys, again likely to be grossly underestimated as women tend to underreportthe incidence of induced abortions insurveysettings, show wide variations. Forexample,NFHS-2 data reveal that 1.7% of all pregnancies over a lifetime ended in induced abortions.In comparison, small scale studies report 3.4–14.0 induced abortions per 100 live births Physicians have, on the other hand, established by common practice certain minimum evidence of good faith, the absence of which justifies serious doubt of the integrity of their "therapeutic intent." These are: 1. The abortion should have been performed by a reputable physician in consultation with a specialist; 2. The physician should have obtained written permission from the husband or guardian as well as of the patient herself; 3. The operation should have been performed in a reputable hospital and suitable records made of history, physical examination, operation, and results of the pathological examination of the operative specimens. Criminal abortions are unlawful abortions; i.e., the interruption of pregnancy by the mother herself or another person. In lay language, the term abortion is generally considered synonymous with criminal abortion, whereas the term miscarriage generally implies that the pregnancy stopped spontaneously. The law does not recognize such a distinction. It defines a criminal abortion as one that is illegally induced, that is to say, one which is not justified by the circumstances. The statutes in the various states defining the crime of

abortion are similar: They provide that whoever with the intent to cause the termination of a pregnancy unlawfully administers or causes to be given to the pregnant woman any drug or poisonous substance or unlawfully uses any instrument or other means whatsoever with this intent shall be guilty of the offense. The prevalence of this criminal act is far greater than most law enforcement officials realize.

THE CHANGING FACE OF ABORTION- LEGISLATIVE MEASURES

The period since the 1990s has witnessed major changes in the field of abortion including the adoption of new legislative measures, the introduction of new technologies and the growing demand for sex selective abortion.

Some of these developments, such as the recent amendmentsto the Medical Terminationof Pregnancy (MTP) Act and the introduction of innovative abortion technologies, such as the improved manual vacuum aspiration technique and medical abortion, are expected to increase the availability of safe abortion services. However, other trends, such as the growing demand for sex selective abortion, are likely to increase the incidence of unsafe abortion and adversely change the gender dynamics even further. Including the adoption of new legislative measures, the introduction of new technologies and the growing demand for sex selective abortion.

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Recognizing the failure of the MTP Act of 1972 to make legal abortions widely available, the government amended the Act in 2002. With the amendment, the authority for approval of registration of MTP centres has been decentralized from the state to the district level.

In the year 2003, the government introduced a further amendment to MTP Rules which has rationalized the criteria for physical standards of abortion facilitiesfixing different criteria as appropriate for conducting first-trimester and second-trimester abortions. While facilities such as an operation table and instruments for performing abdominal or gynaecological surgery, and equipment's for anaesthesia, resuscitation and sterilization continue to be the minimum requirements for centres offering second-trimester abortion, the MTP Rules 2003 require a gynaecological or labour table rather than an operation table and resuscitation and sterilization equipment but not anaesthetic equipment's for centres

These rules also permit a registered medical practitioner to provide medical abortion services in the case of termination of pregnancy up to seven weeks, provided the practitioner has access to a facility for offering surgical abortion in the event of a failed or incomplete medical abortion. The Reproductive and Child Health Programme launched in 1997 and the National Population Policy, 2000 have also delineated a number of strategies to increasethe access to safe abortion at the primary health care level.

Amendments have also been introduced in the Prenatal DiagnosticTechniques (Regulation and Prevention of Misuse) (PNDT) Act of 1994. This wasnecessitated as the PNDT Act had failed to curb the practice of testing for sexdetermination and consequent sex-selective abortion in the country.

With the recent amendment to the PNDT Act, preconception and pre-implantation procedures for sex selection are banned in the country. The Amendment stipulates compulsory maintenance of written records by diagnostic centres/ doctors offering sonography service. Local authorities have also been given powers to ensure the enforcement of the Act.

With these measures, the government expects to prevent women from resorting to sex-selective abortions, which are conducted during the second-trimester and carry a high risk of complications for women.

Section 3 of the Medical Termination of Pregnancy Act,1971 says that pregnancy can be terminated:

- As a health measure when there is danger to the life or risk to physical or mental health of the women;
- Eugenic grounds: where there is a substantial risk that the child, if born, would suffer from deformities and diseases and
- On humanitarian grounds: such as when pregnancy arises from a sex crime like rape or intercourse with a lunatic woman, etc.

But recently in July 2016, the apex court permitted a rape survivor to terminate her pregnancy at 24 weeks, which is beyond the permissible 20 weeks limit prescribed under the Medical Termination of Pregnancy Act, 1971.

OTHER LAWS AND PUNISHMENTS:

- The government of India has also enacted **Pre Natal Diagnostic Techniques Act of 1994** and the **Medical Termination of Pregnancy Act of 1971** was enacted by the Government of India with the object of reduction in the incidence of illegal abortion and consequence maternal mortality and morbidity.
- The **Indian Penal Code (Act No. 45 of 1860)** provides an exception and permits abortion only when it is justified for the good faith purpose of saving the life of the woman.
- In many parts of India, daughters are not preferred and hence sex-selective abortion is commonly practiced, though being illegal in India. To address the same, some statutes provide certain benefits to unborn child, resulting in an unnatural male to female population sex ratio due to millions of developing girls selectively being targeted for termination before birth.
- **Section 312 to 316 of the Indian Penal Code** provided that any person performing an illegal abortion was subject to imprisonment for **three yearsand payment of a fine**; if the woman was **"quick with child"** the punishment is**imprisonment for up to seven years and payment of a fine.**
- The same penalty applied to a woman who induced her own miscarriage.

CASES:

1. ***Rajeswariv. State Of Tamil Nadu and Others***

The Court granted the permission to terminate the pregnancy caused by rape to an unmarried girl of 18 years on the ground that bearing the unwanted pregnancy of the child of 3 months made her to become mentally ill. Also, the continuance of this pregnancy is causing her great anguish in mind, resulting in a grave injury to her mental health.

2. ***Dr.NishaMalviya and Anr. v. State of M.P***:

The Court granted the permission to terminate the pregnancy caused by rape committed by the accused. The allegations were that two other co-accused took her and terminated her pregnancy. So the charge on them is causing miscarriage without consent of girl. The Court held all the three accused guilty of termination of pregnancy which was not consented by the mother of the girl or the girl herself.

3. ***MurariMohan Koley v. The State (2003)***

In this case, a woman wanted to have abortion on the ground that she has a daughter who is 6 months old. So, she approached the petitioner who was a registered medical practitioner for an abortion for a consideration. But somehow the condition of the woman worsened in the hospital and she was shifted to another hospital. But it resulted in her death. The abortion was not done. He had to establish that his action was done in good faith (includes omission also) so that he can get exemption from any criminal liability under section 3 of the MTP Act, 1971.

4. **Shri Bhagwan Katariya And Others v. State of M.P:**

In this case, after the complainant conceived pregnancy, the husband and the other family members took an exception to it, took her for abortion and without her consent got the abortion done.

The Court held the doctor liable and opined that if on reference to Section 3 of the Medical Termination of Pregnancy Act, 1971, a doctor is entitled to terminate the pregnancy under particular circumstances. If a pregnancy is terminated in accordance with the provisions of concerned law, it shall be presumed that without the consent of the woman it could not be done.

Thus, the case laws establish that a woman has an absolute right to abortion and no one can take away this right from her. Right to abortion is a fundamental right of privacy. The Judiciary has been playing a vital role in securing these rights to women.

In all the above mentioned cases it is very much evident that women has the right of abortion but there are after effects of abortion may it be spontaneous or the criminal abortion. And criminal abortion has more percentage of affecting the women body when compared to the other.

SUMMARY OF KNOWN HEALTH-RISKS OF ABORTION ON WOMEN

1. Abortion has undisputed immediate health risks.

The undisputed risks of immediate medical complications from abortion include blood clots, Haemorrhage, incomplete abortions, infection, and injury to the cervix and other organs.Abortion can also cause cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, and missed ectopicpregnancy. Immediate medical complications affect approximately 10 percent of women undergoing abortions, andapproximately one-fifth of these complications are life threatening.

2. Studies reveal that the long-term physical and psychological consequences of abortion include anincreased risk of:

- Subsequent preterm birth;
- Placentaprevia (a complication during pregnancy where the placenta partially or totally covers the mother's cervix and which can cause severe bleeding before or during delivery);
- Serious mental health problems;
- Breast cancer as a result of the loss of the protective effect of a first full-term pregnancy;
- Miscarriage and
- Death.

a) Abortion increases the risk of pre-term birth in future pregnancies.
b) Induced abortion is a risk factor for a woman developing Placenta Previa in futurepregnancies.
c)Decades of medical evidence have revealed that abortion carries significant psychological risks, including increased risks of depression, anxiety, and suicide.
d) Abortion is associated with an increased risk of breast cancer.

1. The known, substantial health risks of chemical abortions may be significantly Underreported.
2. It is undisputed that the later in pregnancy an abortion occurs, the riskier it is and the greater the chance for significant complications.

3. Myth: Abortion is safer than childbirth

CONCLUSION

Criminal Abortion is an evil to the society which has been in practice from many decades in many countries of the world including India. When the Supreme Court decided *Roe v. Wade* in 1973, there was no evidence in the record related to medical data. The "abortion is safer than childbirth" mantra of 1973 continues to be repeated by abortion advocates today. However, it has been undermined by the plethora of peer-reviewed studies published in the last 40 years. Specifically, recent studies demonstrate that childbirth is safer than abortion especially at later gestations. Many unsafe abortions are not reported because of presumedsuccessful termination, only to be detected later with somecomplications. Hence, it is the combined responsibilityof the government and health care

providers to provide easyaccess to safe abortion services as well as to create socialawareness regarding safe and legal abortion methods.

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