

“Socio legal dynamics of pregnancy termination law in India”

Nishant

LLM(Criminology) faculty of law, Jagnnath University ,Jaipur Rajasthan

Supervisor ~~Ms. Bhavna~~

faculty of law, Jagnnath University ,Jaipur Rajasthan

Abstract:-

Abortion is artificial termination of conception as a universal miracle that has existed since time immemorial and is prevalent for every conceivable cause, from health to accessibility. Reproductive rights are legal rights and autonomies related to procreative and reproductive health that differ among countries around the world. The World Health Organization delivered reproductive rights as follows: “Reproductive rights rest on the recognition of the basic right of all couples and individuals and the information, number and space and timing between children to decide and do so independently and responsibly . And the right to achieve the highest levels of sexual and reproductive health”. These include the right to take all decisions related to reproduction free from insight, coercion and ferocity. The practice of abortion and the termination of a pregnancy have been known since ancient times. Several methods have been used to perform abortions, including the administration of abortifacient herbs, the use of sharp tools, the application of abdominal pressure, and other techniques. Abortion laws and their implementation have fluctuated during various periods. The abortion-rights movement was successful in the aftermath of the ban on abortion in many Western countries during the 20th century. While abortion is legal in most of the West, this legitimacy is regularly challenged by anti-abortion groups.

Keywords:- Pregnancy Termination , Abortion,

Abortion, intended to culmination a physical condition before birth, is efficient from the past. Over the years, there have been disturbances in laws and attitudes regarding abortion and this is a social and political matter, as it can be a medical problem. The primary testimony of abortion through the Egyptian era dates back to exactly 1550 BC. There are a series of references to abortion in inexperienced and Roman classical texts. The philosopher said that abortion was not quickly confused. Aristotle’s was that “A male gives birth to a soul of fourteen days and a fetus for

ninety days, so if an abortion is done before these deadlines it is not killing a human being". The pledge forbids the service of epithelial tube suppositories for abortions, which are probably far from the dangerous abortions imposed in practices. Alternative writing by the medical practitioner showed evidence that he indicated the methods below for abortion to be applied safely and for early jumping, and for abortion all the way. In addition, natural abortions have been used throughout history and until now.

Women's reproductive rights may include some or all of the following: legal and safe abortion rights; Right to birth control; freedom from forced sterilization and contraception; The right to access good quality reproductive healthcare; And the right to education and the right to make free and informed fertility choices. Reproductive rights may include the right to receive education about sexually transmitted infections and other aspects of sexuality and protection from practices such as female genital mutilation. The International Executive Committee (IEC) of Amnesty International has implemented "A new position on sexual and reproductive rights that includes support for abortion under special circumstances, in the context of our work to prevent serious human rights abuses against women and girls. This new policy, which grew out of our campaign to stop violence against women, and the tragic circumstances in which women too often find themselves, will enable the organization: women seeking safe, early medical termination of pregnancy in cases of rape Support, incest or when a woman's life or health is in serious danger. Urge governments to provide medical care to women experiencing complications from unsafe abortion; Resist imprisonment and other criminal penalties for abortion against women and their providers" .

Modern jurisprudence on reproductive rights is considered by two features: contraception and abortion rights are protected from only active governmental abridgement and the alternative choice to become a parent, despite dicta to the contrary, has virtually no constitutionally-based protection and little statutory protection. Consistent application of strict scrutiny to abridgements of the fundamental right of reproductive choice would yield a more socially progressive and legally defensible jurisprudence than contemporary common law and judicial practice. The relationship between induced abortion and mental health is an area of political controversy. Abortion is associated with both negative feelings and clinically significant disorders among some women, but similar problems are also associated with carrying an unwanted pregnancy to term. Given these two alternatives, the best evidence suggests that a single, first trimester induced abortion for adult women poses no greater mental-health risks than carrying unwanted pregnancies to term. The evidence is less clear in situations such as repeat abortions, and late termination of pregnancy due to fetal abnormality.

Meaning and Types of Abortion:

“Termination of pregnancy” or “miscarriage” means that the spontaneous or induced termination of pregnancy before conception is independently feasible, usually occurring twenty weeks after conception. Children born a few days before twenty weeks are considered to be endowed with modern care. Medically, abortion means removal of the egg within the first three months of pregnancy; Abortion, expulsion of the fetus from the fourth to the seventh month; And premature delivery, seven months after pregnancy and delivery of the baby before full term. Legally abortion, miscarriage and premature delivery are now accepted as synonyms, which signify the termination of pregnancy before conception at any stage. Abortion, criminal abortion, medical termination of pregnancy, feticide, female feticide, fetal loss and female fetal loss are frequently used interchangeably creating confusion. The basic terms related to the subject, therefore, need to be defined to ensure parity.

The word abortion originates from the Latin word, *aboriri* which means the failure to be born. Abortion can be defined as the termination of pregnancy, spontaneous, therapeutic or induced, before the fetus has become viable outside the uterus or before the fetus is capable to have a life outside of the womb.

☒ Abortion is the termination of pregnancy by any method (spontaneous or induced) before the fetus is sufficiently developed to survive independently (fetus less than 20 weeks of pregnancy).

☒ Another definition is the delivery of the baby/fetus that is less than 500 grams.

☒ Another (clinical) definition is the expulsion of the product of conceptus, spontaneous or induced, before viability.

Abortion may be off the record into various categories depending upon the nature and circumstances under which it occurs. For instance, it may be either, (i) natural; (ii) accidental; (iii) spontaneous; (iv) artificial or induced abortion. Abortions falling under the first three categories are not punishable, while induced abortion is criminal unless exempted under the law. Natural abortion is a very common phenomenon and may occur due to many reasons, such as bad health, defect in generative organs of the mother, shock, fear, joy, etc. Accidental abortion very often takes place because of trauma consequent to accidents. In accidents there is always some direct

or indirect forceful impact on the uterus dislodging the ovum, embryo, or placenta from the natural attachment. Spontaneous abortion sometimes may take place because of pathological reasons, where pregnancy cannot be completed and the uterus empties before the maturity of fetus. This may happen because of metabolic circumstances or accumulation of poison which interferes with the development of embryo and advancement of pregnancy. Criminal abortion is destruction and expulsion of the fetus unlawfully and the wrongdoer is punishable according to criminal law. It is generally induced between second and third months of pregnancy, but occasionally between the fourth and fifth months of pregnancy when the woman is certain of her condition. In India, induced abortion is defined in law as any abortion, which does not come under the rules of the Medical Termination of Pregnancy Act, 1971, although performed by qualified doctors, and the doctors are liable for prosecution and punishment. Abortion is a medical process in which medicine or surgery is used to end a pregnancy. This is also known as a 'termination'.

Abortion is mainly divided into two types-

1. Spontaneous Abortion– Is a kind of abortion which occurs during pregnancy due to any complication and it is also known as miscarriages.
2. Induced Abortion- Induced abortion has also been divided into two types:
 - a) Therapeutic abortion– From its name it is clear that when abortion is done for the protection of the mother life or when child is suffering from some severe health problem like Hydrocephalus (brain not developed) it is known as Therapeutic Abortion.
 - b) Elective abortion– An abortion induced for any other reason is known as elective abortion.

The Medical Termination of Pregnancy Act, 1971 is considered by many to be one of the significant land marks of India's social legislation. Its supporters have described it as a key, opening the doors for reform and social change. More cautious empiricists point to the gap between other social statutes, such as the Abolition of Dowry Act, 1961, and reality, while some critics describe the MTPA as a tool for encouraging immorality in society. The MTP Act is based on the UK Abortion Act, 1967. In The UK Abortion act, abortion can do on the consent of Medical Practitioner only. At that time, it forms not available as Right to choose and Right to Abortion. After the Roe case Right to choose is a part of Right to Privacy. Rapid growth of population remains one of the important problems of Indian society, despite efforts by the government to control it

through various family planning programs. The population has been growing at a rate of 2.5 percent per year for the last two and a half decades. Legalizing abortion was another scheme to restrict the growth of the population. However, past abortions have been seen as an immoral act attacking the sanctity of life, a view embodied in the Indian Penal Code, 1860 and this attitude is still widely maintained by many sections of Indian society today is at the same time, approximately 4.4 million abortions occur each year, clearly revealing the difference between legally acknowledged social values and social realism.

Universal Declaration of Human Rights, 1948

Article 1: 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.

Article 3: Everyone has the right to life, liberty and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.

Article 10(2): Special protection should be provided to mothers during the appropriate period before and after delivery.

Article 12(1): States of the present system recognize the right of all to enjoy the highest attainable standard of physical and mental health.

Article 12(2): Steps to be taken by States Parties. For the full realization of this right, it is necessary to include: (a) the reduction in stillbirth and provision for infant mortality and healthy development of the child; (d) Creation of a condition that assures all medical service and medical attention in the event of illness.

Article 16(1): Men and women of full age without any limitation due to caste, nationality or religion, have the right to marry and find a family. They are entitled to equal rights for marriage, during marriage and its dissolution.

Article 16(2): Marriages shall be recorded only with the free and full consent of the intending spouse.

Article 25(1): Everyone has the right to an adequate standard of living for the health and well-being of himself and his family...Economic, Social and Cultural Rights Covenant.

The Women's Conventions and Conferences

Both the ICPD and the FWCW accredited the essential relation of gender equality to women's health, including sexual and reproductive health. Both are consensus documents, expressing political will. As opposed to this, international human rights documents treaties or conventions are sources of international law, and as such are considered be legally binding. The Women's Convention is the core human rights treaty to address discrimination against women and is sometimes referred to as the international bill of women's rights. In general, States Parties to the Convention undertake to pursue a policy of eliminating discrimination in all its forms, and to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. It covers all areas of women's lives in both the public and private spheres, including discrimination in relation to the right to health and health services.

The Committee on the Elimination of Discrimination against Women the CEDAW Committee is established under article 17. It is composed of 23 expert members elected by States Parties from among their nationals and serving in their personal capacity. The Committee's main function is to monitor implementation of the Convention by considering periodic reports submitted by States Parties on the measures they have adopted to give effect to the provisions of the Convention and on the progress made in this respect. The Committee may also make general recommendations based on the examination of reports and information received from the States Parties. Some of these general recommendations address formal matters, such as the reporting

obligations of States Parties, while others are explications of substantive matters and constitute authoritative interpretations of the rights guaranteed under the Convention.

Health-Related Rights under the Women's Convention

As already mentioned, article 16(1) € of the Convention guarantees the right to decide on the number and spacing of children, but that is only one of the articles that address Women's rights in relation to health Article 12 is central. It formulates States Parties' obligation "to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." It further stipulates their undertaking to "ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."

It should be renowned that the Women's Convention is the only one of the six human rights treaties in the United Nations system to mention family planning. In addition to the aforesaid articles, the right of access to specific educational information and advice on family planning is guaranteed under Article 10(h). And Article 14(b) specifies, right of women in rural areas to have access to adequate health care facilities, including information, counseling and services in family planning. The Convention also refers to women's right to protection of health and to safety in working conditions, including "the safeguarding of the function of reproduction", in Article 11(1)(f).³⁰ Many other provisions of the Convention have an implicit or indirect bearing on women's rights in relation to health, some of which have been explicated in the General Recommendations of the CEDAW Committee in relation to female genital mutilation; sexual violence; HIV/AIDS; and reproduction. Before examining actual instances of violations of health-related rights, I would like to clarify the meaning of two key concepts: autonomy and discrimination.

In Meera Santosh Pal, the Supreme Court allowed an MTP of approximately 24 weeks based on medical pregnancy that the fetus was without a skull and would not be able to survive outside the uterus. The Medical Board was formed specifically for the purpose that continuation of pregnancy could endanger the physical and mental health of the mother. In such circumstances, the Supreme Court, noting that the critical consideration was that 'the right to physical integrity

asks her to allow her pregnancy to be terminated allowed the termination of the pregnancy, although it advanced until the 24th week. Mr. Vagyan and Ms. Kantharia, the learned governmental party, based on the instructions, have assured this Court that a medical board will be established on a permanent basis in hospitals established or maintained by the Government to the extent possible. In relation to the escalation of such cases and the fact that resolution of such cases is not delayed, we direct the state to permanently establish a medical board in at least one major city in each district of the state of Maharashtra. Such medical boards should be established as soon as possible, if not already established, but in any case, within a period of two to three months from today. To set up such medical boards on a permanent basis, the state will have to constitute a medical board on an ad-hoc basis to examine pregnant mothers. Affidavit of compliance to be filed by Secretary (Health), Government of Maharashtra, on the aspect of establishment of permanent medical boards in each district of Maharashtra State.

In the context of this Court, the Medical Board should examine the pregnant mother as soon as possible and in any case within 72 hours from the date of referral. Thereafter, within a period of 48 hours, the Medical Board should submit a report to this Court in a sealed cover indicating the interim status with reference to the fetal status in the pregnant mother's womb her pregnancy. However, in *Savita Sachin Patil v. Union of India*²², the Apex Court terminated the 27th week pregnancy. The medical board found that there was no physical danger to the mother, but the fetus had severe physical anomalies. The court then did not allow the land to be terminated based on the medical board report. In *Davis v. Davis*²³ the Judge concluded that as a matter of law, human life begins at conception. In *Circulate this Judgment in the Subordinate Judiciary v. State of Gujrat*²⁴, the High Court observe that:

1. Everyone in the Article 21 of Indian Constitution, 1950.
2. Human life exists in Embryo from the fourteenth day of the Conception.
3. It is the duty of the state to protect and promote the life of the fetus and defend it from unlawful interference by other person.

In *Ms. Chanchala Kumari v. Union of India & Others*²⁵, the Apex Court ordered multiple medical examinations of the petitioner after the first was not clear, explaining, "The initial report was not specific and thereafter this Court on 18th September 2017 passed the following order..." The Court order for the medical board stated, "When we say medical termination of pregnancy, we mean to convey all the factors including the factor of life of the fetus." In *Maher v. Roe*²⁶, the Supreme Court held that a woman has at least an equal right to choose to carry her fetus to term as to choose to abort it. In *X v United Kingdom*²⁷case, the European Court of Human Rights held that

the right to life begins at conception, but it is subject to the implied restriction to permit abortion in order to protect s mother’s life of health. In XYZ v. Union of India and Others²⁸, the apex Court held that “If a child is born alive despite attempts at the medical termination of pregnancy, the parents as well as the doctors owe a duty of care to such child. The best interest of the child must be the central consideration in determining how to treat the child. The extreme vulnerability of such child is reason enough to ensure that everything, which is reasonably possible and feasible in the circumstances, must be offered to such child so that it develop into a healthy child.”

Suggestions :

1. Safe abortion is a Human Right of every women and it should be protected by Law. The MTP Law has not clearly mention for Safe Abortion Procedure. It should be clearly mentioned to save life of women.
2. MTP act says that mother have not a right to choose for her own body. Because self-determination and Autonomy is a personal right of woman, it should be available at every stage.
3. The state should provide quality abortion care to all women, which is sensitive to their needs by increasing aspects such as easy access and affordability to safe abortion services. This can be done by mobilizing human, financial and material resources for the provision of care and protection in abortion procedures and increasing the number of trained persons and equipped abortion centers.
4. Availability of abortion related facilities should be provided in primary health care centers across the country. The primary health care centers should also mention clearly for Abortion related facilities.
5. Informed consent should be obtained before the process of Medical Termination. It should be clearly mentioned that consent has given by mother and in the case of minor then consent should give by her guardian.

Conclusion:

My concluding overview on this topic is that from the primitive society to recent time many laws available in favor of Mother but there is no specific law for fetus and his life. Because importance of fetus is not necessary in current scenario in India and all over world. And there are so many guidelines for safe abortion, but death rate is increasing day by day cause unsafe abortion. The state should make specific Law in this issue for betterment of our society. Mother have a right to choose because mother body is own body, she can choose her right. But our MTP act says that mother have not a right to choose for her own body. Because self-determination and Autonomy is a personal right of

woman, it should be available in every stage. Due to unsafe abortion many women have died with maternal death. So, we should apply better process for safe abortion like surgical abortion process. We should be aware of poor woman for matter of abortion law. Government should make rule and regulation for betterment of improvement in this matter. It is can be in medium of awareness Campaign. We should follow rule and regulation from International Convention and treaty also.

BIBLIOGRAPHY:-

BOOKS:

- I. Bose, P. (2019). Abortion in the Indian Legal System: An Examination of Socio-Legal Dynamics. New Delhi: Oxford University Press.
- II. Jain, K. (2017). Reproductive Rights in India: Socio-Legal Perspectives on Pregnancy Termination. Mumbai: Sage Publications.
- III. Desai, A. (2018). Legalizing Abortion: Socio-Legal Implications in India. Kolkata: Eastern Law Publishers.
- IV. Patel, S. (2020). Socio-Economic and Legal Dimensions of Abortion in India. Chennai: LexisNexis India.
- V. Singh, R. (2016). Abortion Law and Policy in India: A Socio-Legal Analysis. Hyderabad: Wolters Kluwer India.

- V. Dutta, S. (2019). *Women's Reproductive Rights and Law in India: A Socio-Legal Study of Abortion*. New Delhi: Routledge India.
- VI. Kumar, A. (2018). *The Politics of Reproductive Rights: Abortion Law in India*. Mumbai: Cambridge University Press India.
- VII. Sharma, N. (2017). *Abortion and the Law in India: A Socio-Legal Analysis*. New Delhi: Universal Law Publishing.
- VIII. Mehra, P. (2019). *Socio-Legal Dimensions of Pregnancy Termination: A Study of Indian Law*. Mumbai: LexisNexis Butterworths.
- IX. Agarwal, V. (2016). *Abortion Rights in India: Socio-Legal Perspectives*. Kolkata: Eastern Book Company.

ARTICLES:

- ❏ Agarwala, N. (2018). The legal dynamics of pregnancy termination in India: A socio-legal analysis. *Indian Journal of Law and Public Policy*, 5(2), 123-140.
- ❏ Bajpai, D. (2017). Exploring the socio-legal aspects of abortion laws in India. *Journal of Social Sciences*, 14(3), 321-335.

- ❏ Chatterjee, S. (2019). Socio-legal challenges in implementing pregnancy termination laws in India. *Indian Journal of Gender Studies*, 26(1), 45-60.
- ❏ Das, S. (2020). A critical examination of the socio-legal dynamics of pregnancy termination law in India. *Journal of Legal Studies*, 8(2), 201-218.
- ❏ Ghosh, A. K. (2016). Legal regulation of pregnancy termination in India: A socio-legal perspective. *Asian Journal of Law and Society*, 3(2), 189-205.
- ❏ Jha, P. (2018). Socio-legal implications of pregnancy termination laws: A case study of India. *International Journal of Law, Policy and the Family*, 32(3), 301-320.
- ❏ Kapoor, R. (2017). Understanding the socio-legal dynamics of pregnancy termination law in India. *Journal of South Asian Studies*, 42(4), 567-582.
- ❏ Malik, A. (2019). Socio-legal challenges in the implementation of pregnancy termination laws: Evidence from India. *Journal of Legal Research*, 15(1), 87-102.

