



Law on Abortion in India Issues of Validity and Extent

Shreyansh, LL.M.

Department of Law, M.D. University, Rohtak

shreyansh13@gmail.com

Abstract

Human Rights are those rights that should be accessible to every person, without regard to race, religion, or national origin, without exception. Recognizing all members of the human family as having inherent dignity as well as equal and inalienable rights serves as the cornerstone of freedom. The right to life is the most crucial right that every human being may possess. The right to life is considered to be the most crucial of all human rights and no exceptions are authorised. It cannot be taken away. The arbitrary denial of life is prohibited under “Article 6(1) of the International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights). However, there are several concerns that are contentious in relation to this highest right. One such topic is the subject of the individual's right to choose abortion. It is considered that every mother has the right to an abortion, and that this is a universal right, among other rights for women. The rights of the mother, on the other hand, must be weighed against the rights of the unborn.

Key Words: Human, Rights, Abortion, women etc.

Introduction

Through history, the practise of inducing abortions has been the subject of heated discussion and controversy. The personal attitude taken by an individual on difficult ethical, moral, and legal problems has a close link with the value system held by that particular individual. One's attitude on abortion is defined as a mix of their personal ideas about the morality of induced abortion and their personal beliefs about the ethical limit of the government's lawful jurisdiction to regulate abortion.

According to the Supreme Court, a woman's individual rights, which include her right to life, liberty, and the pursuit of happiness, are what establish her legal right to have an abortion under certain circumstances.



The reproductive and sexual health of a woman, as well as her reproductive choices, are important considerations. Reproductive rights are widely acknowledged on a global scale as being essential to the advancement of women's human rights as well as the promotion of development. Reproductive rights have received extraordinary attention and support in recent years from governments all around the globe, which has resulted in historic progress. Indicators of a government's commitment to advancing reproductive rights, such as formal laws and policies, are essential. Every woman has the unalienable right to have complete control over her body, which is more often referred to as bodily rights.

A woman has a right to abortion if:

- If the pregnancy is not terminated, the pregnant lady will face a greater risk to her life than if the pregnancy is allowed to continue.
- It is important to note that the fundamental purpose for an abortion is to prevent significant and long-lasting damage to the physical or mental health of the expectant woman.
- It is likely that the continuation of the pregnancy will result in a greater risk of harm to the pregnant woman's physical or mental health than if the pregnancy were terminated.
- If the pregnancy were to be continued, there would be a greater risk of harm to the physical or mental health of any existing children in the family of the pregnant lady than if the pregnancy were to be terminated, according to the experts.
- The likelihood that the child, if born, would be born with physical or mental impairments that will lead it to be severely handicapped is a crucial factor in this decision.
- If the case is an emergency, the operating practitioner may certify that the procedure is urgently essential in order to save a mother's life or to prevent substantial and permanent injury to a pregnant woman's physical or mental health from occurring.

International Instruments Relating Right To Abortion



Abortion is lawful until the conclusion of the first trimester of pregnancy, according to Article 1 of the American Declaration of Rights and Duties of Man and the Inter American Commission on Human Rights (IACHR). Article 6(1) of the International Covenant on Civil and Political Rights, Article 2 of the European Convention on Human Rights, and Article 4 of the African Charter on Human and People's Rights all safeguard the right to life from the time of conception. However, they remain deafeningly silence on the question of when life begins. In light of the interpretations provided, we are obliged to assume that the kid should not be safeguarded from the moment of its conception. There must be a balance struck between the right to life of the foetus and the rights of the mother.

International courts and tribunals have avoided delving into the challenging philosophical question of when life starts, instead concentrating on the interpretation of the language employed in the relevant treaties and international agreements. They have typically ruled that allusions to every human being, everyone, and every person do not encompass an embryonic baby when referring to people in general.

The right of a woman to her private life has served as the basis on which a number of international organisations, notably the World Health Organization, have supported a woman's right to have an abortion. The right to freedom of expression and access to information has been invoked in favour of women's right to receive information about their abortion choices, according to the Supreme Court. The capacity of a woman to make an educated choice about the number and spacing of her children in a free and responsible way may also be a basis for her right to seek abortion.

The Indian Perspective

Abortion is permitted under Indian law if the continuation of the pregnancy would put the pregnant woman's life or bodily or mental health at danger, or if the pregnancy would cause her severe physical or mental harm. Abortion has been practised by numerous people in the past. Due to the fact that it was illegal, it was only practised in secret. Following the passage of the Act, medical termination of pregnancy became lawful, subject to specified criteria designed to protect the health of the mother. Abortion is strongly denounced in Vedic, Upanishadic, laterpuranic(old) and smriti literature, as well



as in other religious traditions. According to the Medical Council of India's Code of Ethics, I shall preserve the highest level of respect for human life from the moment of conception. It has been determined by the Supreme Court that Article 21 of the Constitution contains an implicit right to privacy, and that a right to abortion may be inferred from this right. After being enacted by both houses of Parliament and receiving the assent of the President of India on August 10th, 1971, the Medical Termination of Pregnancy Bill came into effect on September 1st. The MTP Act, 1971 was the name given to it when it was first published in the Official Gazette. This legislation protects the right of Indian women to have an unplanned pregnancy terminated by a registered medical practitioner in a hospital built or maintained by the government” or in a location designated by the government for the purposes of this Act. The ability to terminate all pregnancies was not available in all cases.

Key amendments:

- For certain groups of women, such as survivors of rape, incest victims, and other vulnerable women, the top gestational limit should be raised from 20 to 24 weeks (differently abled women, minors, among others).
- If you want to terminate your pregnancy up to 20 weeks, you will require the opinion of a single health-care specialist. The opinion of two doctors is required for the termination of a pregnancy between the ages of 20 and 24 weeks of gestation.
- The upper gestational limit will not be applied in situations of significant foetal anomalies that have been identified by a Medical Board.
- A confidentiality provision. The identity and other personal information of a woman whose pregnancy has been terminated may not be disclosed to anyone other than a person who has been authorised by law to do so.
- The failure of contraceptive provision was extended to unmarried women in order to give access to safe abortion services based on a woman's decision, regardless of her marital status.
- The Universal Declaration of Human Rights, which was adopted in 1948.

Medical Termination of Pregnancy Act



In 1971, “the Indian Parliament approved the Medical Termination of Pregnancy (MTP) Act, to regulate and provide access to safe abortion services across the nation To save a woman's life or preserve her physical or mental health, this law permits only registered allopathic medical practitioners working in certified abortion facilities as of this writing; it also permits abortion in cases of economic or social necessity, rape, incestuous relations, foetal impairment, or the failure of a contraceptive method used by a married woman or her husband to be effective. It is not essential to get consent for an abortion from the woman's husband or other family members; however, consent from a guardian is required if the woman seeking an abortion is under the age of eighteen or is mentally ill at the time of the abortion. It is legal to terminate an undesired pregnancy up to 20 weeks of pregnancy gestation under the parameters of the statute; however, if the pregnancy is more than twelve weeks' gestation, a second doctor's approval is required. There are a few exceptions to this rule, which are as follows: If a practitioner considers that an abortion is urgently necessary to preserve a woman's life, the woman's gestational age is not taken into consideration. If the practitioner considers that an abortion is urgently essential to preserve the woman's life, a second opinion is not required in this situation.

Providers of Legal Abortion Services under the MTP Act

Health care personnel who are not allopathic doctors are currently barred from being educated as abortion providers or from legally performing abortions in India under the country's current abortion laws. Obstetricians-gynaecologists and other allopathic doctors who have completed a bachelor of medicine/bachelor of surgery degree, who have completed specific government-approved training in abortion provision, and who have obtained certification are authorised to perform abortions in accordance with the laws of their respective states. If a training institution wants to fulfil regulatory standards, it must execute a minimum of 600 procedures every year and have all of the essential equipment. Each student must view at least 10 abortion operations, assist with five procedures, conduct at least five procedures under supervision, and perform another five procedures independently throughout the suggested two-week training period for surgical abortion. Abortion services are available at all public facilities, as long as the practitioner



is qualified in the provision of abortion services. In accordance with the MTP Act, each state is required to offer Women who are at least 20 weeks pregnant may have an abortion at tertiary-level health care institutions (medical schools) and secondary-level health care facilities (district hospitals and first referral units). Private-sector abortion facilities are permitted to perform operations throughout the first and second trimesters of pregnancy after obtaining government accreditation as a licenced abortion clinic. It is only private-sector facilities that are subject to the Medical Termination of Pregnancy Rules and Regulations of 1975, which were enacted to carry out the Medical Termination of Pregnancy Act. The Medical Termination of Pregnancy Rules and Regulations define the criteria and procedures for approving an abortion facility, which are only applicable to private-sector facilities.” They also outline the procedures for obtaining consent, maintaining confidentiality and reporting information, among other things.

Conclusion

Women in impoverished countries are more vulnerable to the complications of unsafe abortion, which is a serious public health concern. An abortion is permitted in India for a wide variety of medical and societal reasons, including those related to pregnancy. Women may get safe abortion services from skilled medical staff in licenced institutions, and children must have parental approval from their husbands or fathers in order to do so legally. A combination of factors, including limited access to authorised abortion providers, the threat of forced contraceptive acceptance, the financial costs associated with legal abortion, the stigma associated with induced abortion, and low levels of public awareness regarding the legality of the procedure, force many pregnant women to seek safe abortion services from untrained clandestine practitioners operating in potentially hazardous conditions, according to the World Health Organization. When abortions are conducted under such conditions, the effects may vary from life-threatening to long-term complications involving the reproductive system, such as infections, persistent incapacity, and infertility.

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