



ABORTION : AN INDIAN PERSPECTIVE

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ABSTRACT

This paper focuses on the concept of abortion which is been considered a taboo even in the 21st century. Although there has been much development in the process there still lies a social stigma with regard to abortion. To facilitate the research and make it relevant with the present day, a survey has been conducted to know the general perspective of the youth towards abortion. The legal controversies associated with abortion too has been discussed in this paper. The stigma present in the society also leads to influencing the mindset of the people towards abortion. Further, this paper will also focus on the recent developments which have taken place in the legal field along with providing certain recommendations which might help in changing the social scenario in relation to abortion and making abortion an accepted phenomena in Indian society.

INTRODUCTION

“No you can’t deny women their basic rights and pretend it’s about your ‘religious freedom’. If you don’t like birth control, don’t use it. Religious freedom doesn’t mean you can force others to live by your own beliefs.”²

The debate surrounding the issue of abortion has been going on since centuries in India and around the world. Earlier, abortion was a taboo and was seldom mentioned in the open, but with time that has changed it is being discussed, but with numerous contradictory approaches. Abortion can be defined as *“the artificial or spontaneous termination of pregnancy before the embryo or fetus can survive on its own outside a women’s uterus.”³* The word abortion refers to the expulsion from the uterus of the products of conception. It can be sub divided into three types namely, spontaneous, therapeutic and criminal.⁴

Spontaneous abortion or commonly known as a miscarriage is one of the most common forms of abortion. It is the natural death of the fetus before is gains the power to survive separately. Miscarriage as a form of abortion is beyond the control of any physician or a

¹ Symbiosis Law School, Hyderabad

² Barack Obama

³ Black’s Law Dictionary.

⁴ ‘Abortion in India- A Legal Study’, Journal of the Indian Law Institute ; Symposium on Population Control and the Law ; 1974 , Vol 16, No.4



person. It can occur due to vaginal bleeding, stress and even sometimes age related factors. Research has shown that 30 to 40 % of pregnancy's result in miscarriages.⁵ It is primarily a medical problem. In countries where induced abortion is illegal or carries a certain amount of stigma, miscarriages are looked at with suspicion. In all societies miscarriages are considered an unpleasant event for anyone who suffers it. Therapeutic abortion is a form of abortion in which abortion is induced following a diagnosis of medical necessity. These abortions are carried out to prevent any harm to the mother. Another instance in which this kind of abortion is performed when there is a chance of the child being mentally and physically handicapped.⁶ There have been cases in which it has been seen that the mother's life is at a risk, if the pregnancy is carried to full term. Hence, in those situations therapeutic abortion is conducted.

The third category of abortion is one which is the most widely discussed across all societies in all countries. Criminal abortion is the kind of abortion in which the process of abortion does not conform to the statutory provisions governing the performance of abortions.⁷ Criminal abortion is an abortion which is not legal as well as safe. Unsafe abortion is also a term used frequently in respect of criminal abortion. Criminal abortion is illegal and it causes the death of thousands of women around the world. According to research 68,000 women dies of unsafe abortion annually.⁸

In India abortion has been made legal and the Medical Termination of Pregnancy Act gives the laws and provisions dealing with abortions.⁹ Abortion can be carried out if the pregnancy carries risk of grave physical injury and along with that endangers the mental health of the woman. In cases of contraception failure, rape or when the child has a tendency of mental illness, abortion is allowed. Abortion is legal and has been present in India more than half a century. However, even in the 21st century with immense medical advancement access to safe termination of pregnancy remains limited for most women.

One of the major reason for the ongoing debate over abortion is the presence of sex selective abortion in certain cultures, especially that of India. India has had a long history of female

⁵ The Johns Hopkins Manual of Gynecology and Obstetrics ; By The Johns Hopkins University School of Medicine Department of Gynecology and Obstetrics, K. Joseph Hurt, Matthew W. Guile, Jessica L. Bienstock, Harold E. Fox, Edward E. Wallach

⁶ 'Abortion in India- A Legal Study', Journal of the Indian Law Institute ; Symposium on Population Control and the Law ; 1974 , Vol 16, No.4

⁷ Merriam Webster.

⁸ WHO Report.

⁹ GuttMacher Institute ; Maternal and Social Factors Associated with Abortion in India : A Population based Study, R .William Stokes & Saseendran Pallikadanath ; International Family Planning Perspectives ; Vol 32 , No. 3



feticide and infanticide. Predominantly a male dominated society, cases of killing the female fetus is not unheard of. Many researchers suggest that there have been numerous reasons which have been cited for the undergoing abortion.¹⁰ In Maharashtra it has shown that the need for spacing out children in a reason why many women opt for abortion. In Tamil Nadu, non-consensual sex from which cases on unwanted pregnancies arise are a reason for abortion. Marriage at an early age also seems to be a reason for abortion.

A question which has been discussed extensively in both national as well as international level is that whether the mother has the right to terminate her pregnancy or the right to life of unborn child is violated. This question is such that it involves issues such as human rights violations as well as the rights of women.¹¹ And, even after a lot of researchers no conclusive answer has been obtained for the same. The Right to Abortion is included under the Right to Privacy which is essential to the life and dignity of every human being.¹² The Right to Abortion was deemed to be a Fundamental Right as according to the Constitution. There was widespread support for this judgment as this was a huge step towards emancipation of woman and women's rights.

In India, The Medical Termination of Pregnancy Act abortion is allowed up to 20 weeks of pregnancy. However, there have been cases when the parents have desired for an abortion but were unable to undergo one because of the restricted law.¹³ In a recent case the Supreme Court allowed a thirteen year old rape victim to terminate her pregnancy. The Bench headed by Chief Justice Deepak Mishra, in consultation with medical practitioners that “*Considering the age of the petitioner (rape survivor), the trauma she has suffered because of sexual abuse, the agony she is going through and the opinion of the medical board favoring termination of pregnancy, the termination of pregnancy should be allowed,*”¹⁴

Abortion has seldom been considered a positive aspect of Indian society. There have been developments but the pace of that has been extremely slow. Hence to understand it better at the paper will analyse what the youth of India think about the concept of abortion and their

¹⁰ GuttMacher Institute ; Maternal and Social Factors Associated with Abortion in India : A Population based Study, R .William Stokes & Saseendran Pallikadanath ; International Family Planning Perspectives ; Vol 32 , No. 3

¹¹ Abhipsa Gahhayat ; Manupatra

¹² As held in the landmark case of Roe vs. Wade; 410 US 113.

¹³ Reuters "Not a woman's choice": India's Abortion Limit Puts Women at Risk, Say Campaigners; 6th September 2017.

¹⁴ The Hindu; Supreme Court Allows 13-year-old Rape Survivor to Abort her 31-week-old Fetus ; Krishnadas Rajgopal, 6th September 2017.



opinion on the legality or illegality of it. Further cases will also be discussed in which abortion was allowed as well as not allowed and its impact on the people and the reaction of the same.

ANALYSIS

The youth of a nation is its future. It is on them to make it a better place to live in. For that it is essential that they are on the right path. The path of truth, justice and equality. Hence, for that reason a survey was conducted of about fifty young men and women of India and their views taken on abortion and their approach towards it. The results of the study will be discussed further in the paper. India as we discussed before has been the hub of unsafe abortions. And, hence this becomes a very integral part of why abortion is still looked down upon and not considered as something positive. In spite of the fact that India is one of the few countries where abortion is legal, this situation is astonishing.¹⁵

In the survey conducted the responses received were not always similar, there were different points of view which were put forth. There has been a controversy regarding whether women have the exclusive right to decide whether abortion should be done or does the family and the husband or the partner whichever the case may be. Many opinions were said in regarding this aspect. Fifty persons of the people who were asked said that the right of abortion was the exclusive right of women or not answered in the affirmative. According to the survey it is a woman's body in which the child would live for almost nine months before taking birth. Hence, the right whether to have a baby or not lies with the women. However, there were answers which said that the woman does not have the exclusive right to abort her fetus. The father of the child has the right, however in a recent case the Supreme Court held that, "*an adult woman had an unimpeachable right to give birth or terminate pregnancy.*"¹⁶

Very often abortion has been considered as a practice against the moral and ethical code of society, however, in reality more than any moral code, it is the life of a woman which is being harmed if abortion is allowed or not allowed whichever the case may be. Abortion is a medical procedure which takes place within the body of a woman. Hence, linking a medical procedure with a moral ideology is unfair. One major reason which brings about the question of morality is the fact that it deals with a human life. Many consider that a fetus is a human

¹⁵ Carol Anne Douglas, Priya Verma, Katherine Goktepe, Laura Nixon and Jen Chapin Harris ; India: Unsafe Abortions; Source: Off Our Backs, Vol. 35, No. 1/2 (January-February 2005), p. 6

¹⁶ Dhananjay Mahapatra ; Supreme Court Upholds Women's Right to Abort ; 28th October 2017



being from its conception and hence killing a living creature is against the moral or 'humanity'.¹⁷

Another very controversial aspect of abortion is the fact that there have been times when pregnancies have risen out of unforeseen circumstances, for example rape being the most common. Rape victims are often pregnant and there have been times when abortion is not allowed by the doctors and the Courts. In a recent case abortion was not allowed by the Supreme Court to a ten year old rape victim. The reason given for this judgment was that “

*"abortion was neither good for the girl nor for the fetus"*¹⁸. According to the Medical Termination of Pregnancy Act, a fetus can be aborted until the 20th week of pregnancy. However in this instance the case came into light only in the 26th or 27th week. Hence, the Court did not allow the abortion. However, in spite of these cases there have been other in which the Court has allowed the termination of pregnancy especially because of the state of the victim, who in majority of the cases are minors and unable to understand the gravity of the situation. For them, it is a pain in their stomach. In a recent case the Supreme Court passed the judgment that a thirteen year old rape victim who was pregnant could undergo abortion.¹⁹

One of the major reasons why abortion is criticized all over the world is because of the controversy surrounding the rights of an unborn child. Anti-abortion campaigns have protested for the fact that killing of a fetus leads to the murder of a human being. In the survey the responses to whether the killing of an unborn child is a crime or not, were mixed. Though some were of the opinion that no it was not a crime, because the fetus is nothing but a collection of cells and tissues. However, the majority opinion was that abortion of the fetus was equivalent to murder as it was the killing of an innocent being. In Oklahoma a resolution was passed which declared that abortion was equal to murder. They criticized the US Supreme Court for making the procedure legal.²⁰ In India though there has been no concrete resolution or order which states that abortion is murder, however religious beliefs and ethics prevents abortion from being a practice which is encouraged by the society.

¹⁷ BBC Ethics Guide ; Moral Parenthood'

¹⁸ CNN; 'India's Supreme Court Denies Abortion for 10 year old Rape Victim; Chandrika Narayan; 28th July 2017.

¹⁹ The Guardian; Indian girl allowed abortion amid claims doctors 'afraid to help' child rape victims; September 7th 2017.

²⁰ Newsweek; Abortion in America: Oklahoma House Declares Abortion Murder; 5th September 2017.



Family has been described as the nucleus of every Indian society. Hence, it is expected that the family plays a very important role when the question of abortion arises. The question put to the participants in this survey was whether the family has a say in deciding whether to keep the baby or not. The responses were varied. Thirty percent of the participants answered in the affirmative that the family has a say whereas, forty percent said that the family does not have a say. However the remaining although admitted that the family cannot force its opinion on the woman suggested that the opinion of the family should be taken. The scenario may be different in the Western countries as the family is not that over powering. However, in Indian culture the family has a huge role to play which makes it imperative that there suggestion is taken, even if not followed.

An aspect which has been discussed extensively in relation to abortion is the question of the human rights violations of the unborn child. The responses recorded for these were very different. Some considered that aborting the fetus would lead to the killing of a living being whereas some say that until the fetus has reached a great extent it would not come under the ambit of violation as it is not a living being. However, there have been instances in which the child has been considered as living since the time of its conception. In the case of *Priyesh Vasudevan vs. Shameena*²¹ it was held that “:*child born justo matrimonio*²² are regarded by reference to the moment of conception and not of birth and the unborn child in the womb if born alive is treated as actually born for the purpose of conferring on him benefits of inheritance.” This is done mainly to confer the inheritance rights on the child. Article 21 of the Indian Constitution²³ also confers the right on the state to protect the rights of the unborn child.

A controversy which has existed in India regarding abortion is that of sex selective abortion. From centuries, India has been a patriarchal society where a boy has been welcomed and a girl child considered as a curse. The common concern of the authorities is that by allowing abortion there can be cases of female foeticide as well. Cases have been seen in which the child is aborted not because of anything else, but for the mere fact that it is a girl child. In a recent case, the police found nineteen female fetuses which were aborted.²⁴ According to the survey many a time’s abortion gives rise to female foeticide, which is why it is not encouraged

²¹ 2005(4)KLT1003

²² Getting married.

²³ Article 21 - Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

²⁴ BBC News; India abortion: Police find 19 Female Foetuses; 6th March.



.The main reason behind the allowing of sex selective abortion is the laws of the country. In spite of laws being present, the implementation is not strong enough to prevent the practice by the doctors. However, sex selective abortion has been prohibited in India, though in many parts of the country it is still very much present.

Through the survey conducted it could be seen that the opinions vary drastically among the youth of the country. Some consider the right of abortion exclusive to women whereas something that the women does not have the right to decide on abortion. One of the major reasons why abortion was not looked at in good light was the fact that it was not allowed by society along with the fact that it gave a way for female feticide. Ninety percent of the participants thought that the laws in relation to abortion are inadequate and do not empower women in any way. Though the remaining ten percent observed that the laws in place were adequate enough to empower the women.

Though there have been a lot of developments in respect of abortion and laws related to it, there is a long way to go. This is further reaffirmed with the results of the survey as there still exists a section of society, not only male but female as well who consider that abortion is a killing of the baby and the woman should not indulge in that. In a society where we still think that giving women the power to choose for herself, is giving them a higher place than, development is still a long way.

CONCLUSION

“No woman can call herself free, who does not control her own body.”²⁵

Abortion has been talked about and even till now there has been no conclusive answer as to whether it is wrong or right. There have been views supporting both perspectives and neither have reached a conclusion. The existing law which does not permit abortion beyond 20 weeks has to be changed because it has been seen that numerous unforeseen circumstances arise which may call for the need for abortion even after 20 weeks.

In a recent case, the bench of the Supreme Court comprising of Justice YV Chandrachud and S.K Kaul, it was said that *“we need to stretch the law a little bit.”* This was in relation to a case filed in which the woman was more than twenty weeks pregnant. Sharmishta Chakraborty, a thirty five year old woman from Kolkata wanted to abort her fetus because it

²⁵ Margaret Sanger.



had developed a severe cardiac disease.²⁶ In another case a thirteen year old rape survivor was allowed abortion as it was harmful for the mental physical and emotional wellbeing of the child.

The survey conducted showed varied results but out of that what stood out was the fact that in spite of all the talks of empowering women and giving equal status to them, were a section of people who considered that the woman should not have a say in whether abortion should be conducted or not.

When we talk about the development of a nation we look at the status of women in that country. The rights and powers that they have. India in that respect is far behind. There may be new developments in the field of science and technology but when it comes to women's rights it is far from ahead. Regular cases of rape, molestation, acid attacks and female feticide and infanticide with the unequal sex ratio especially in the states of Punjab and Haryana show that the position of women is deteriorating day by day. Abortion, is a right which should be given to a woman from her birth. It is her body and her decision whether to have a child or not. In this decision, the family, the society and even the husband or partner whichever the case may be has a right to object or question the decision. It is a question of personal liberty which should be given to every woman in spite of her race, caste or creed. Primarily a male dominated society, India has legalized abortion, however with it is attached social stigma and cultural barriers which makes it even more difficult for the process to be carried out.

Like everything there are positives as well as negatives. It is the same for abortion. There are advantages as well as disadvantages. By allowing abortion many a times it saves the life of the mother, who probably would not have been able to carry the child to full term. Secondly, in cases where the woman is aware that she will not be able to take care of the child in the right way, it is better to abort the fetus than making it lead a miserable life when he or she grows up. If the child has some severe disease and abortion will save the life of the mother, it is an option which should be allowed. However, there are certain disadvantages, the biggest being the fact that it often leads to female feticide and the imbalance in the male female ratio.

RECOMMENDATIONS

The following are certain recommendations which may help in the situation been improved. For every civil society it is essential that woman is equal with men. Hence, for that to happen,

²⁶ Hindustan Times ‘; Supreme Court wants to Stretch Law on Abortion; 24th June 2017.



it is imperative that they are given the right to choose. Giving women the right to decide about their own body does not make a man weak, it makes a woman stronger and in turn a stronger society. In spite of the fact that abortion is legalized in India, the facilities are not easily available to women. Sometimes illegal abortion done in the incorrect way may harm the health and life of the woman. The health care system should be such that the choice to go through with abortion is easily available to women without the fear of the society.

Stricter laws should be made along with the enforcement of its implementation. Unless, precedent is set there can be no new developments and it will remain the stigma that it has always been.