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Abortion Policy and Women's Health in India: A Legal Analysis

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ABSTRACT

Women's physical, mental and emotional impact depends on a case-to-case basis. Some women experience strong emotions and mood swings after an abortion, mainly due to the hormonal shifts. The hormone levels stabilise as the menstrual cycle returns. Choosing to undergo an abortion can be an emotionally-challenging experience. Women may feel extreme relief and sadness at the same time. They can also experience anxiety, grief, a sense of loss, and sleep disorders. This is natural, but if the negative feelings prolong, they should not be ignored, and help should be sought. This article analysis the laws relating to abortion and women's health in India.

Keywords: Abortion law, health of women, MTP.

I. INTRODUCTION

In 1960's the government constitute the Shantilal Shah Committee to investigate whether India wanted a regulation to alter abortions. Based on the recommendation of this Committee, a medical termination bill was introduced in the Parliament in August 1971. The title of the law is the Medical Termination of Pregnancy (MTP) Act, 1971². An act to provide for the termination of pregnancies with the aid of registered medical practitioners and for subjects linked therewith or incidental thereto. Thus, the law was enacted to legalize abortion, promote access to secure abortion and save your risky tactics with the aid of using untrained people, shield women's life and health on medical as well as compassionate grounds and decrease incidences of maternal mortality and maternal morbidity. It was also a governmental ploy to govern our burgeoning population. Legalization of institutional abortion also offered safety to medical practitioners.

In September 2021, the Medical Termination of Pregnancy (Amendment) Act of 2021³ came into force, extending the better gestational restrict for abortion from 20 to 24 weeks. Although the alternate did not apprehend abortion on name for as a pregnant person's right, it turn

¹ Author is an Advocate at Madras High Court, India.

² Government of India The Medical Termination of Pregnancy Act [Act No. 34, 1971]. New Delhi Ministry of Health and Family Planning, 1971.

³ Government of India The Medical Termination of Pregnancy Act [Act No. 8, 2021]. New Delhi Ministry of Law & Justice, 2021.

out to be heralded as the subsequent step in making Indian abortion legal guidelines more progressive. The alternate turn out to be a response to the Indian courts receiving requests to access stable clinical manual from many women with unwanted pregnancies beyond the permissible gestation period.

(A) Salient features of amendments:

- Enhancing the upper gestation limit from 20 to 24 weeks for special categories of women which will be defined in the amendments to the MTP Rules and would include survivors of rape, victims of incest and other vulnerable women (like differently-abled women, minors) etc.
- Opinion of only one provider will be required up to 20 weeks of gestation and of two providers for termination of pregnancy of 20-24 weeks of gestation.
- Upper gestation limit not to apply in cases of substantial foetal abnormalities diagnosed by Medical Board. The composition, functions and other details of Medical Board to be prescribed subsequently in Rules under the Act.
- Name and other particulars of a woman whose pregnancy has been terminated shall not be revealed except to a person authorised in any law for the time being in force.
- The ground of failure of contraceptive has been extended to women and her partner.

The Medical Termination of Pregnancy (Amendment) Bill, 2021 is for expanding access of women to safe and legal abortion services on therapeutic, eugenic, humanitarian or social grounds. The amendments include substitution of certain sub-sections, insertion of certain new clauses under some sections in the existing Medical Termination of Pregnancy Act, 1971, with a view to increase upper gestation limit for termination of pregnancy under certain conditions and to strengthen access to comprehensive abortion care, under strict conditions, without compromising service and quality of safe abortion.

It is a step towards safety and well-being of the women and many women will be benefitted by this. Recently several petitions were received by the Courts seeking permission for aborting pregnancies at a gestational age beyond the present permissible limit on grounds of foetal abnormalities or pregnancies due to sexual violence faced by women. The amendments will increase the ambit and access of women to safe abortion services and will ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy⁴.

⁴ Rajya Sabha passes The Medical Termination of Pregnancy (Amendment) Bill, 2021, <https://pib.gov.in/PressReleasePage.aspx?PRID=1705381>

(B) Procedure in Medical Termination Act:

- Section 3 provides for the termination of pregnancy of a woman where the gestation period of the pregnancy is less than 20 weeks, or where it exceeds 20 weeks but does not exceed 24 weeks and possess a threat to the life of pregnant woman and there is grave danger to her physical and mental health.
- Section 3(2)(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the opinion, formed in good faith, that—(i)the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or (ii)there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.
- Section 5A No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act except to a person authorised by any law for the time being in force.

The Medical Termination of Pregnancy Act, 1971 (“MTP Act”) was passed due to the progress made in the field of medical science with respect to safer abortions. The new Medical Termination of Pregnancy (Amendment) Act 2021 expands the access to safe and legal abortion services on therapeutic, eugenic, humanitarian and social grounds to ensure universal access to comprehensive care.

In *X v. the Principal Secretary Health and Family Welfare Department & Another*⁵ determined with the aid of using a three-judge bench of the Supreme Court, the nameless Petitioner found out that she turned into pregnant in June 2022. On five July 2022, an ultrasound discovered an intrauterine being pregnant of twenty-two weeks. She moved a petition earlier than the High Court of Delhi with a request to terminate her being pregnant through registered medical practitioners (RMPs) at a non-public or government hospital earlier than 15 July 2022, for the duration of the statutory restriction of 24 weeks.

One of her prayers to the Court turned into to unmarried women in the scope of Section 3(2) (b) which governs the termination of pregnancies among 20 to 24 weeks of gestation. The High Court held that for the reason that Petitioner is an single lady whose being pregnant arose out of a consensual relationship, her case is “definitely now no longer covered” with the aid of using

⁵X v. Principal Secretary Health and Family Welfare Department, (2022) 2022 SCC OnLine SC 1321.

clauses of Rule 3B of the MTP Rules⁶. As a consequence, her termination request turned into denied. A Special Leave Petition turned into then filed earlier than the Supreme Court, which discovered that the precept of statutory interpretation is that the phrases of a statute need to be study of their whole context.

Firstly, the Court's know-how of intellectual infection as a ground for termination changed into unclear. Despite X's more than one submissions concerning her intellectual health, postpartum despair and psychosis, suicidal dispositions and tendency to reason damage to herself and her children, the Court refused to allow termination primarily based totally on those grounds. Secondly, with the petitioner's worries of suicide considered and rejected, the judgement begs the question—what constitutes a hazard to a woman's life? The judgement shows that for a complete exercising of reproductive autonomy, the woman has to show the risks of her situation and her absolute want for an abortion. With this, the Court efficaciously went lower back on its selection in *X v Principal Secretary*, which had regarded a woman's role as the “final decision-maker” on subjects of her reproductive choices.

In *X v Union of India*⁷, a 27-year-old married woman, a mother of two, approached the Supreme Court to are seeking permission for abortion as according to the Medical Termination of Pregnancy Act, 1971. The petitioner found her being pregnant at round 24 weeks because of a circumstance called lactational amenorrhea, which ends up in breastfeeding ladies now no longer menstruating.

The Court mentioned that she did notentice Section 3(2B) protections which protected sexual attack survivors, minors, widowed or divorced persons, disabled persons, mentally unwell persons, foetal abnormality or being pregnant at some stage in humanitarian crises. She additionally did now no longer appeal to Section 5 protections which permit termination of being pregnant in instances in which it's miles vital to shop the existence of the woman.

The medical board constituted via way of means of the All India Institute of Medical Sciences had first of all given its inexperienced sign for the abortion, and the Bench of Justices Hima Kohli and B.V. Nagarathna had allowed it, primarily based totally at the truth that bearing every other infant may want to have an effect at the petitioner's already fragile intellectual health. But one of the doctors at the board had then written to the Court, wondering the termination, given the possible status of the foetus. With the problem hence reopened, the 2judges took divergent paths, with Justice Nagarathna who prefer the rights-primarily based totally method however

⁶ Government of India Medical Termination of Pregnancy Rules, 2021. New Delhi Gazette of India, 2021.

⁷*X v UOI*, 2023 SCC Online SC 1338

Justice Kohli protecting in opposition to an abortion.

This stalemate brought about the problem being located in the front of a different bench led by hon'ble Chief Justice Chandrachud, which determined in opposition to granting the abortion based on a new report by the scientific board which showed that the foetus had no abnormalities. The reviews of the medical board, the reopening of the problem, and the eventual judgement earlier than a different bench—one wonders wherein the woman's voice and rights characteristic withinside the midst of all this. The ping-pong among the attorneys, doctors and judges turned into reflective of a type of systemic brushing-off of the reasons or limitations that someone who is looking for a late-time period abortion may also have confronted in her lived fact. It is rankling that those who need abortion are frequently confronted with the daunting mission of proving why they deserve it. An instance of this in the present matter was when the Court determined that this was not a case of sexual assault. Often, the articulated needs of the pregnant individual are positioned to second-guessing or counselling to make the malternate that decision. In this case, the Court requested the attorneys to speak to the petitioner approximately keeping the being pregnant for some greater weeks.

II. CONCLUSION

In India, the field of modern judgments has been muddied by a `moral` contention entering the narrative, as if via a backdoor channel. The right-based discourse has been comfortably bypassed by the concept that a woman's alternatives are everyone's business. This is the stress of a societal bias, that's being allowed to elevate its censorious head even withinside the courtroom, undoing the development made there withinside the face of public morality.
