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Review of Developments in the Medical Termination of Pregnancy

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ABSTRACT

Recently the Medical termination of Pregnancy Bill, 2020 was introduced in the lower house of the Parliament i.e Lower House on 02 March 2020 and was finally passed on 17 March 2021 and it was also passed from the upper house i.e Rajya Sabha on 16 March 2021. The Bill finally received the assent of the President on 26 March 2021 and it became a law. The Amendment seeks to increase the time period in which pregnancy can be terminated. Termination of pregnancy is an event that can be traced for a long time and keeps on being a subject of conflict even today. It includes various social, financial and ethical aspects. Although termination of pregnancy should be a matter of absolute women's rights, still in our country India it is governed by the laws enacted by the parliament which does not take into account the choice of the woman in some cases. We will look into this in detail in this paper.

This Research Paper has been divided into V Parts. Part II will examine about the Laws for Abortion in India. In Part III, we will see the Comparative Study of the Medical Termination of Pregnancy Act, 1971 with the recent Medical Termination of Pregnancy (Amendment) Act, 2020. Further, Part IV shall deal with the comparative analysis of abortion in USA and India. Part V shall deal with the Social ethical issues and Psychosocial aspects related to termination of pregnancy. Lastly, Part VI shall deal with the conclusion and suggestions.

Keywords - Abortion, Reproductive right, Termination of Pregnancy, Miscarriage, Right to life.

I. INTRODUCTION

Recently, a 15 years old girl went missing from her home. After her parents filed the First Information Report³ (FIR), Police started the primary investigation and found her in a nearby village. Later, it was found that the girl was pregnant by her cousin who raped her numerous times and threatened her that he would kill her in case she reveals anything about the incident

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³ The Code of Criminal Procedure, 1973, § 154, No. 2, Acts of Parliament, 1974 (India).

to her parents or to anyone else. Since the pregnancy was under 20 weeks the doctors were able to save her life by terminating her pregnancy. In case this unfortunate incident had happened before 1971, it would have been really difficult to terminate the pregnancy since there was no provision for legalised termination of pregnancy at that time. After the enactment of Medical Termination of Pregnancy Act, 1971⁴ the law for abortion was relaxed in India. The said Act provides for the termination of pregnancy in a very convenient and safe manner.

Women and their right to decide their sexuality and reproduction are contemplations that have rarely, if at any point, been considered in the development of strategies identified with abortion policies and regulations. Termination of pregnancy is one of the most crucial issues since it deals with the taking of a human life. If we look at the abortion from traditional point of view one can find both religious and legal arguments. For the one who favour abortion relies on the arguments that it is a right of women i.e. “Right to Choose” whether she wants to continue with the pregnancy or wants to abort it and for the people who are against it they make a religious agreement. The practice of abortion has led to political, ethical debates and thus abortion does not simply remain a medical issue but “the fulcrum of a much broader ideological struggle in which the very meanings of the family, the state, motherhood and young women's sexuality are contested”.⁵

The Right to life is a broad and multi-dimensional concept and has been embodied under Article 21 of the Indian Constitution. Article 21 states that “No person shall be deprived of his life and personal liberty except according to procedure established by law”. Here the term “Person” includes man, woman and transgender as held by the Hon’ble court in case of National Legal Service Authority V. Union of India⁶. It is believed that among all the rights provided to women, right to abortion is also one of the most essential right. Right to abortion has been recognised under Right to Privacy which is an essential part of Right to personal liberty. But one of the most crucial questions which comes to mind is whether the unborn child should be treated as a human being? Ronald Dworkin has done a detailed study on law of abortion and according to him, a fetus has no interest before trimester. According to his research, a fetus cannot feel the pain until the late pregnancy because of the reason that its brain hasn't been developed yet. According to scientific research, the brain of the fetus is able to feel pain after 26 weeks of pregnancy.⁷ So, the abortion is in the interest of the fetus or not must be

⁴ The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament 1971 (India).

⁵ Patchesky Rosalind Pollack, *Abortion and Women's Choice: The State, Sexuality and Reproductive Freedom*, 39, Northeastern University Press, 1991.

⁶ National Legal Service Authority v. Union of India, AIR 2014 SC 1863.

⁷ Clifford Grobstein, *Science and the unborn: choosing human futures*, Basic Books, 13, 1988.

dependent upon whether the fetus itself has interest or not and shouldn't be dependent on whether the interest will develop if no abortion takes place.⁸

II. LAWS FOR ABORTION IN INDIA

(A) Indian Penal Code, 1860

The Indian Penal Code, 1860 deals with criminal law of our country and it takes into account all the religious, moral, ethical circumstances of our Indian community and thus, have made abortion an illegal offence under Section 312 to 316 of the Code. Section 312 of the said code provides for causing miscarriage. According to the Section ``whoever (including women) voluntarily causes a woman with a child to miscarry the child shall be liable for imprisonment of either description which may be extended to 3 years or with fine or with both, provided that such miscarriage shall not be caused in good faith; and in case the women is quick with the child the punishment may be extended upto 7 years or with fine or both".

The term "abortion" has nowhere been used in the code. The terms used in the code are "miscarry" and "unborn child" and none of these words have been defined anywhere in the code. However, with the help of legal precedents and interpretations we came to know that miscarriage means causing criminal abortion⁹. The aforementioned Section has been divided into two parts: "with child" and "quick with child". The former means as soon as gestation begins and the latter means when the motion of the foetus can be felt. The termination of pregnancy cannot be done unless and until it has to be mandatorily done to save the life of the woman.

Section 313 of the IPC, 1860 states that whosoever does the offence described in the previous Section i.e., Section 312 (as described above) without the consent of the woman shall be punished with imprisonment which may extend to life imprisonment or of either description which may be extend to 10 years and with fine. Further, Section 314 provides that any act done with the intent to cause miscarriage leads to death of the woman shall be punished with either imprisonment which may extend to 10 years and with fine. In case this act has been done without the woman's consent it shall be punished with imprisonment which may extend to life imprisonment or with the punishment mentioned above. It should be noted that for the offence under this Section, it is not necessary that the accused should be having the knowledge that such an act is likely to cause the death of the woman.

Section 315 provides that when a person does any act to prevent the child from being born or

⁸ Ibid.

⁹ Upendra Baxi, Abortion laws in India, Journal of Indian Law Institute, 1986-87, Vol-28-29.

to cause it to die after birth and does the act without good faith for purpose to save the life of the woman shall be punished with imprisonment of either description which may be extend to 10 years or with fine or with both. Lastly, Section 316 states that any person who causes the death of a quick unborn child with the act which would have made him liable for the offence of culpable homicide and causes death of quick unborn child with such offence shall be punished with imprisonment which may extend to 10 years and with fine.

(B) Medical Termination of Pregnancy Act, 1971

Nowadays abortion laws have been made much flexible in the neighbour countries. Many countries allow termination of pregnancy at the instance of the woman. India also made its abortion law by enacting the Medical Termination of Pregnancy Act, 1971. The said Act was enacted for relaxing the strict and rigid abortion laws made by Indian Penal Code, 1860 which criminalised all termination of pregnancy except done for saving the life of the woman. In August 1964, the Family Planning board constituted a committee known as Shantilal Shah committee. This committee was set up to survey/examine the need for legislation for termination of pregnancy in India. After collecting all the data and conducting a number of surveys the said committee finally submitted its report in 1966 to the Ministry of health and family¹⁰. The government of India on the behalf of a report made by this committee introduced a bill for Medical Termination of Pregnancy in 1969 and finally the law was passed by the parliament in the year 1971 and thus, Medical Termination of Pregnancy Act, 1971 came into effect. The committee further mentioned in its report “that legalising medical termination of pregnancy with a perspective on acquiring segment results is strange and may even lose the useful and positive act of family arranging through contraception”.¹¹ The preamble of the Act states that “This is an Act to provide for termination of pregnancy by registered medical practitioner for matters associated therewith or incidental thereto.”¹²

The said Act was amended in the year 1975 to make the procedure more flexible which was rather rigid in the original Act. The original Act contained 8 Sections which states about time period, place, and events in which a pregnancy can be terminated by the medical practitioner. The Act allows the medical practitioner to terminate the pregnancy where the pregnancy will adversely affect the woman mentally or physically. The consent of the woman is a prerequisite before the termination of pregnancy and in case the woman is a lunatic or minor, the consent

¹⁰ Government of India, Report of committee to study the question of legislation of abortion, 1966.

¹¹ Ibid.

¹² The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament 1971 (India).

of her guardian is must.¹³ The Act permits the termination of pregnancy in circumstances till 28 weeks, and as mentioned before the consent of the women is must for it. But the law fails to acknowledge the harsh reality that a woman cannot make a free choice in today's time as well, thus, it fails to attain an equilibrium between the two, the women and the unborn.

In the case of *Nikhil D. Dattar V. Union of India*¹⁴, 2008 the petitioner sought a direction from the court to issue direction for termination of pregnancy. The foetus was analysed for a complete blockage of heart and due to this reason, the petitioner decided to terminate her 26 weeks pregnancy. The petitioner further challenged the Section 5(1) of the said Act but the court held that they don't have power to legislate on a statue. The court observed that the termination of pregnancy can only be done when the pregnancy would be dangerous to the woman. The court thus dismissed the petition and held that for 26 weeks have already been passed no order for termination of pregnancy can be made.

III. COMPARATIVE STUDY OF MEDICAL TERMINATION OF PREGNANCY ACT, 1971 WITH THE RECENT MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2020

The Medical termination of Pregnancy Bill, 2020 was introduced in the lower house of the Parliament i.e., Lower House on 02 March 2020 and was finally passed on 17 March 2021 and from the upper house i.e. Rajya Sabha on 16 March 2021. The Bill finally received the assent of the President on 26 March 2021 and it became a law. The said Act increases the time frame in which abortion can be done. Before the passing of this Act the time limit to terminate the pregnancy was within the 12 weeks of pregnancy with the opinion of one doctor and between 12 to 20 weeks with the opinion of two doctors. The 2020 Act allows pregnancy up to 20 weeks on the advice of one doctor and between 20-24 weeks with the advice of two doctors. The Amendment creates a state level medical board with the opinion of which a pregnancy may be allowed to be terminated beyond the period of 24 weeks in case of foetal abnormalities. There are a number of opinions when we talk about termination of pregnancy. On one hand, it is the right of the pregnant woman whether she wants to continue with the pregnancy or not and on the other hand, it is the duty of the state to protect the rights of the individual and hence, the life of foetus should be saved. Number of writ petitions have been filed by woman before the Apex Court and the respective High courts for termination of pregnancy beyond 24 weeks in cases of foetal abnormalities and in rape cases. The new Amendment provides for the

¹³ The Medical Termination of Pregnancy Act, 1971 (Act no. 34 of 1971), s.3.

¹⁴ *Nikhil D. Dattar v. Union of India S.L.P. (Civil) no. XXXX of 2008*, Supreme Court of India.

termination of pregnancy beyond the period of 24 weeks in case of foetal abnormalities on the advice of the medical board as mentioned above. Thus, for termination of pregnancy beyond 24 weeks in rapes cases still remains in dispute and the only resolution to it may be granted by court by filing a writ petition before it. The Amendment does not classify the category of women who may be allowed to terminate the pregnancy between 20 to 24 weeks and it has left the scope of framing the rules in this context with the government. The Amendment does not specify the time duration in which the medical board has to pronounce its decision. Pregnancy is a sensitive matter and any time lapse can lead to cautions in terminating the pregnancy. As the study shows that transgender can become pregnant too after receiving hormone therapy it is a grey area in the Amendment that whether it covers transgender (not woman) within its scope or not¹⁵. Before this Amendment, the termination of pregnancy beyond 20 weeks was only allowed by the Supreme Court and High Courts via Article 32 and 226 respectively. After looking into the merits of the case, the court orders for setting up a medical board and on it's report the court decides whether to allow the termination or not. Now let us see some of the important cases dealt by the Hon'ble courts in this regard.

In the case of *Meera Santosh Pal V. Union of India*¹⁶, in this case a 24 weeks pregnant woman, approached the Supreme Court under Article 32 for the termination of her pregnancy. The court ordered for constituting a medical board. After the reports came, the medical board submitted to the court that continuing the pregnancy would not only lead to risk of life of woman but also the foetus would also not be able to survive due to abnormalities. The court after hearing the report came to the conclusion and allowed the woman to terminate the pregnancy.

In another case of *Sarmistha Chakraborty V. Union of India*¹⁷, a pregnant woman, approached the Supreme Court under Article 32 for the termination of her pregnancy. The court ordered for constituting a medical board. After the reports came, the medical board submitted to the court that the woman was subject to mental injury and that the child born would need cardiac surgery immediately from the inception after birth. Thus, the court allowed the woman to terminate the pregnancy.

However, this is not always the case. The Supreme court has disallowed the termination in many cases as well. Like, in case of *Savita Patil V Union of India*¹⁸, a 26 weeks pregnant woman approached the Hon'ble court for termination of her pregnancy and after the report of

¹⁵ Transgender men who experienced pregnancy after female-to-male gender transitioning, obstetrics and gynaecology, 124(6), 1120-1127.

¹⁶ *Meera Santosh Pal V. Union of India*, (2017) 3 SCC 462.

¹⁷ *Sarmistha Chakraborty V. Union of India*, (2018) 13 SCC 339.

¹⁸ *Savita Patil V Union of India*, (2017) 13 SCC 436.

the medical board it was clear that there was no physical or mental injury to the woman the court dismissed the petition and disallowed the termination. Similarly in case of *Sheetal Salvi V. Union of India*¹⁹ the Supreme court dismissed the petition on report of the medical board as there was no injury to the pregnant women.

Many times, women are left with no choice but to continue with the pregnancy due to delays in medical reports or due to the late and time taking judicial system of our country. Same happened in the case of *R and another V. State of Haryana*, in this case a girl was kidnapped and then raped. The doctors denied to terminate the pregnancy even after knowing the fact that it was a rape case. The girl was left with no option but to come before the court of law. By that time, she was 22 weeks pregnant and the High court constituted a medical board and the report said that the pregnancy would cause no harm to the girl. The High Court disallowed the termination of pregnancy to the girl but ordered the state government to provide her with Rs 5000/- per month and to deposit 5 lakhs rupees in her account. Due to it the girl was left with no option but to continue with the pregnancy and this also shows the failure of the justice system to provide the rape victim with one of the basic rights that is right to abortion.

Changes in the time period for termination of pregnancy:

Time Period	MTP Act, 1971	MTP (Amendment) Act, 2020
Upto 12 weeks	On advice of one doctor	On advice of one doctor
From 12 to 20 weeks	On advice of two doctors	On advice of one doctor
From 20 to 24 weeks	Not Allowed	On advice of two doctors for some category of pregnant women (category to be formed by the government)
Beyond 24 weeks	Not Allowed	On advice of the Medical Board in case of substantial

¹⁹ *Sheetal Salvi V. Union of India*, (2018) 11 SCC 606.

		foetal abnormalities.
At any point of time during the pregnancy	On advice of one doctor, if necessary, in case of saving the life of a pregnant woman.	On advice of one doctor, if necessary, in case of saving the life of a pregnant woman.

The “Medical Board” has been defined under Section 2 (i)(aa) of the (Amendment) Act, 2020 and it provides that medical board has to be constituted in every state and union territory and it shall be composed of a gynaecologist, radiologist and the other members which the state government shall notify.

Further Section 5A of the said Act provides that a registered medical practitioner can only disclose the information of any abortion to only a person authorised by law and to no other person. In the contravention of the said rules, the person shall be punished with an imprisonment which may extend to one year or with fine or both.

One of the major concerns is the lack of qualified medical practitioners who can terminate the pregnancy. According to the research of All India Rural Health Statistics (AIRHS), 2018-19, there are only 1,351 (One thousand three hundred fifty-one) gynaecologists’ clinics in rural areas and there is unavailability of 75% of the medical practitioners²⁰. Also, according to the National Health and Family Survey (NHFS), only 53% of the termination of pregnancy are done by registered medical practitioners and rest are done by nurses, or self²¹.

IV. SOCIO-ETHICAL ISSUES

When a woman has to go through the process of abortion, she not only suffers from physical issues but other issues as well. They can be social, mental or economic issues. People of a society have different ways to see it, it can be either negative or positive. The western civilisations did not approve of this practice in the earlier times. This practice was even banned in many nations by the nineteenth century. Banning abortion was seen in a negative way but what about the rights of a woman. If abortion is banned then in a way, her right is violated. So, in the twentieth century it was understood that rights of a woman are also important. After this realisation, various movements and marches began in some nations including the USA and with the arsing movements, USA began to legalise the practice of Abortion.

²⁰ Section V, Rural Health Statistics (2018-19), Ministry of Health and Family Welfare.

²¹ Ministry of Health and Family Welfare, Lok Sabha, July 20, 2018.

India is a country where social evils prevail immensely throughout the country. Social evils like dowry, illiteracy, poverty and many more makes a room for abortion as an evil too. People in India believe in values and culture and need time to adapt to any kind of changes in the society. When the Medical termination of Pregnancy Act, 1971 came in India, there were contrasting views and thoughts of people. It was mainly divided in two, abortion of unmarried girls and married women. The act created a stigma that abortion of unmarried girls is not considered cultured. The society does not accept unmarried girls so easily and on the other hand consider married women as “social stigma”. So, basically women either married or not are a social stigma in the Indian society. The acceptance of the practice of abortion is not easy for people and this creates a barrier where women need safe and desirable abortion. Hence defeating the sole purpose of this practice. This also affects the health of the woman who undergoes abortion.

There were some cases where a woman or a girl does not want to keep the child, but they had to and that led to suicides. The legalisation of the Medical Termination Act, 1971 has helped in reducing such cases and also ensured better health and safety of women. In many families rural as well as urban, as soon as their daughters get married or their sons, they just demand for a grandson or granddaughter. They don't realise that they are pressuring to plan their family even when they don't want to. Hence, family planning should be a choice and should be done when the parents are ready mentally, physically and financially. However, the era is changing and family planning is also being accepted²².

Even after the Medical Termination Act, 1971, the application of the act was not consistent especially in the rural areas. There are people who are not even aware of this procedure. Also, due to lack of educated professionals, the safety of the procurement of abortion is doubtful and unsafe. The execution of the laws is a real problem. Along with the hospitals, doctors are equally important to examine the patients. The government shall be responsible for the right execution of the laws and to ensure that there are adequate educated professionals. The government shall address the issues relating to family planning with the help of awareness programs. Professionals like doctors can also aid and advice their patients about contraception pills to terminate pregnancy as it is safer option than abortion.

If we see from the ethical perspective, abortion is killing a life inside a mother's womb. This

²² Government of India, Report of Ministry of Health and family Welfare on Rural Health Care System in India (MHFW, 2005).

is a reason why abortion is not acceptable by some people. Legally, it is stated as prevention of unwanted pregnancy. Hence, the legislation was passed to balance the ethical and the legal point of view. Some people still believe that it is morally wrong to abort the child, but it's a right and choice of women and shall not be taken away from them.

In the case, *Suman Kapur v. Sudhir Kapur*²³, it was held by the Hon'ble Supreme Court that if a woman aborts her child without the consent of her husband, it would amount to mental cruelty and the husband can file divorce on this ground. According to the judgements of this case, the Indian Constitution doesn't guarantee the right to abortion to women. Also, the Medical Termination of Pregnancy Act, 1971 provides for termination of pregnancy only in certain matters. The Court gave a decision that severe abnormality in the foetus can be considered as a valid ground for the termination of pregnancy. In such cases it is even considered when the foetus is more than 20 weeks old. In the case of *Ms. X v. Union of India*, The Hon'ble Supreme Court permitted a rape survivor to abort the child even when she was 24 weeks pregnant. The International Federation of Gynaecology and Obstetrics (FIGO) acknowledges that a woman can terminate a severely deformed foetus and it is ethical. In such cases the Federation emphasizes that the primary decision whether to terminate the pregnancy should be of parents. In some countries the legal abortion is permitted to protect the health of woman in case of malformed foetus.

V. PSYCHOSOCIAL ASPECTS

The era where women were not given the right to vote, did not have any right to share their thoughts or ideas is over now. Even abortion was illegal and even if women did not want the child, she had to keep the child. This practice of termination of pregnancy was socially unacceptable by the people. If we dig deeper, it can be seen that abortion was made legal following the psychological impacts on women. When a woman is not ready to bear the child, it is not the physical aspect but also the mental aspect. She might also suffer from mental diseases like depression, anxiety disorders, panic attacks, post-traumatic stress disorder and many more. The family of the woman can also suffer from such disorders. It is observed that it impacts psychologically as a woman has to make her choices according to the child, make any future decisions accordingly. So, she cannot live her own life but needs to take care of the child. Abortion has given a woman a choice whether she wants to keep the child or not. This has reduced the number of women suffering from postpartum depression. It can be dangerous for a pregnant woman carrying the child to the full term and in such circumstances either she

²³ Suman Kapur v. Sudhir Kapur, AIR 2009 SC 589.

has to abort the child or she can die. This was not seen as a valid reason or justification for legalising abortion.

Every person shall have human rights including the bodily rights. A debate on why abortion is titled as killing of human life but the fertilized eggs that are thrown in in-vitro fertilization is not amounted to murder. Although this step should be taken only if necessary. But there are some circumstances when the woman doesn't have any option than to abort like the rape victims. In some cases, the rape victims do not have the option to take contraceptive pills or it remains ineffective.

VI. ABORTION AND THE LAW IN INDIA

Indian Penal Code 1860 (hereinafter referred to as IPC 1860), governs the criminal laws including the laws related to social practices, moral values and religious sentiments in India. Similarly, it includes abortion as a criminal offence under the Sections 312, 313, 314, 315 and 316 of IPC 1860. Unlawfully terminating the pregnancy comes under the ambit of Section 312 of IPC 1860. However, the creators of the provision have not used the word "abortion" directly here. The words "unborn child" and "miscarriage" are also not interpreted properly. But anyone who voluntarily causes miscarriage of a woman is criminally liable for abortion under the provision. Voluntarily causing miscarriage to a woman is indented to be a crime into situations. The first situation is when the child inside the woman is under the gestation period and she can feel the motion of the fetus.

The Section 312 under the IPC 1860 allows the abortion only if there is a harm to the mother. So, to protect the life of the mother medical termination of pregnancy is allowed in such circumstances. There were various countries who were really strict about the laws of abortion and it is available only on the request of the woman. However, in the recent years, these countries have liberalized the laws of abortion. India enacted this legislation (the Medical Termination Act) in the year 1971 to devised some exceptions to the restricted laws made under IPC 1860.

Under the said Act, abortion can only be done in bona fide by the professionals. Also, it empowers the abortion upto twelve weeks (12) and more than two practitioners need to agree that it is important to terminate the pregnancy if done between twelve to twenty weeks. It is not authorized to terminate pregnancy after twenty weeks. Abortion for illegal purposes is not permitted in India. If the child is aborted after twenty weeks it can be a deformed child on birth. A deformed child born shatters the mother and she has to take care of the child at every stage. In recent years, the limit of twenty weeks has been changed to twenty four weeks because of

the amendment in the Act. It also includes women including the incest victims, rape survivors, minors and also any woman (not necessarily married) can go through the procedure of abortion. In the case of *Sharmishtha Chakraborty and Anr. v. Union of India Secretary and Ors.* the issue in the Hon'ble Supreme Court was whether a medical termination be permitted in the twenty fifth week of pregnancy. It was decided that the medical reports need to be consulted before any decision. If the foetus is in abnormal conditions and it is born alive, it would require multiple corrective surgeries. Then the termination of pregnancy shall be considered. Similarly in the case of *Priyanka Shukla v. Union of India and Ors.*, the Delhi High Court suggested that the right to terminate the pregnancy shall not be denied merely because the gestation period has continued beyond twenty weeks.

VII. ABORTION AND THE LAW IN USA

In the case *Roe v. Wade*²⁴, the abortion laws were changed by the Supreme Court of the US. It was held that the criminal statute of texa, is violative of process of abortion under the clause of 14th amendment. The statute criminalises abortion except in the circumstances when there is need to save the life of the mother. The Supreme Court in USA held that the word “person” cannot include unborn child in the abortion issue. Also, it was interpreted that it cannot be said when a life begins. The constitution of the USA does not recognize the right to privacy expressly. However, the Court said that there is a right to privacy and some aspects of privacy exist under the Constitution as well.

The right to freedom of choice is a basic right that must be included under the right to privacy. The basic rights like the decision to choose a life partner, family planning, relationships, education and other personal decisions. Under the 14th amendment, personal liberty includes the right to privacy and shall give women the right whether they want to terminate the pregnancy or not.

In the case *Planned Parenthood Southeastern Pennsylvania V. Casey*, the Supreme Court reasserted and did not overrule Roe's case. The court gave a different direction to the rights of abortion. The Court held that the 14th amendment shall provide the right to women to take her own decisions. Whether she wants to terminate the pregnancy or not. Without the due process of law under the 14th amendment, it states that persons shall not be deprived of life, liberty or property. This is applicable to both the substantive law and procedural matters.

After the decision of the above two cases, women have the right to choose to have abortion in

²⁴ Roe v. Wade, 410 US 113 (1973).

USA. The right to abortion shall prevail under the right to privacy. The unborn child shall be protected only after the phase of viability. The procedure of abortion can be performed on demand up to twelve weeks of pregnancy and this shall be the sole decision of the woman same as the case in India. Mother's health and life is given the utmost priority. It comes under the ambit of fundamental right to life and liberty and it cannot be interfered. The State can interfere only if it has its own interest. The Court has given the priority to the word "liberty" which means sovereign control over one's tastes, preferences, intellect and personality. The above two cases focus on the woman's physical and mental health during the phase of pregnancy.

In countries like Brazil, legal abortion is permitted only in case of rape survivors and if any other women want to abort, will have to face up to 3 years in prison. In France, the limit of abortion is only twelve or fourteen weeks maximum.

VIII. CONCLUSION AND SUGGESTIONS

Before arriving at any conclusion, it is really important to know the motive behind the abortion laws. The primary motive and idea behind its enactment is to provide the woman a better feasibility service for terminating the pregnancy. In India, after passing of the Medical termination of Pregnancy Act, 1971 it did not solve all the hurdles and problems but it afforded an opportunity for the women who were earlier not allowed to terminate the pregnancy except on the ground that the life of the pregnant woman is at risk. Now, in present time after passing of Medical termination of Pregnancy (Amendment), Act 2020 many of loopholes of the prior Act were ratified and much attention were given to the unmarried women, and rape victims. But now also the right of rape victim has been limited upto 24 weeks only unlike those in cases of foetal abnormalities. Such victims have the sole option to approach the High Court or Supreme Court by filing writ petition under Article 226 or Article 32, respectively. The question that where life commences still remains a paradox. So, from the comparison and taking into view the concept of abortion before the enactment of the Medical termination of Pregnancy, Act 1971 and the system of abortion in USA, I came to the conclusion that a woman should have right to choose and laws should be implemented to take into account the rape victims beyond 24 weeks as well. Abortion is one of the most important topics nowadays at both national and international level. It is also in conflict with the right to choose, health, dignified life and also privacy of the pregnant woman.
