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Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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LEGAL RELATIONS AND MORALITY ON ABORTION IN INDIA

AUTHOR– KOMOLIKA GHOSH, STUDENT AT K.L.E. SOCIETY’S LAW COLLEGE, BENGALURU, INDIA

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ABSTRACT

As one of the most multidimensional concepts, abortion has its origins not just in the legal, social, ethical, and political arenas, but also from a moral point of view. Abortion is considered part of women’s rights. It is considered a matter of providing women with their liberty and giving them the authority to make their own decisions about it, but on the other hand, when it comes to India, it is not just about women’s rights and liberties, but it also includes the right of the unborn, since female foeticide is an issue in Indian society today. The following article explores the concept of legal relations and morality concerning abortion. The article will explore how abortion and morality are interlinked and how law comes into the picture concerning abortion. It will include abortion, the reason for its prevalence and how it relates to moral, legal, social and ethical standards. It will also include some suggestions which may be too difficult to believe but can be read and considered.

KEYWORDS – Abortion, morals, ethics, women’s rights, legal, society, liberty.

INTRODUCTION

There has always been a special place in India for women’s rights and of course their empowerment. The topics related to their sexuality, reproductive health etc are rarely considered as important issues to be looked upon on. This happens because of societal pressure since the Indian society is a male-dominated society and it has a patriarchal notion attached. Traditionally, women’s rights laws have been controversial as a result of society’s patriarchal structure, and thus they are not taken into consideration by mainstream government policy.

Abortion in Indian society has been considered morally and ethically wrong since it involves taking away a foetus’s life. In contrast to people that oppose the concept of abortion, those who support it take a legal or ethical stand as well as add a religious dimension, whereas those who oppose it take up the ethical or moral philosophy, contending that abortion should be recognized as a right of women and that she

ought to be given the liberty to decide as it is her body.

Since abortion involves the taking of someone’s life, abortion has been viewed in India as a sin in terms of morality and ethics. Generally, rural Indians do not have a good understanding of the medical aspects of abortion so they take the moral, ethical and moral aspects of abortion as evidence of abortion being wrong in ethical and moral terms. There are still several people who are still opposed to abortions and do not support the requirement that they be legalised in some way, although the laws relating to abortions have been altered to some extent with the thought that it is a part of women’s rights. However, there remains a need for a more liberal outlook concerning this matter, especially in rural areas.

I. ABORTION AND ITS REASONS

The removal of a foetus from the uterus before viability is reached is referred to as an abortion. A spontaneous abortion takes place in a

miscarriage, whereas an induced abortion has been forced. While there are numerous factors, including trauma, genetics, and abnormalities, that might cause spontaneous abortion, there are only four that can cause one that is induced. Miscarriage and induced abortion are the two forms of abortion that are possible. The four reasons are as follows:

1. To preserve the life or mental well-being of the mother.
2. To prevent the completion of pregnancy that has resulted from rape or incest
3. To prevent the birth of a child with a serious deformity, mental deficiency or genetic abnormality.
4. To prevent the birth of the child due to social or economic reasons.

Abortion has historically been one of the most divisive subjects since it encompasses so many different ideas. From several perspectives, including the legal, social, ethical, and moral ones, it is examined. Aside from miscarriages, induced abortions have traditionally been viewed as immoral and unethical because, in the eyes of many, they involve the terrible act of removing an unborn child's life. The opponents of induced abortions also advocate for their religion, contending that as children are God's gifts, aborting an unborn child is equivalent to rejecting God's gift. India's rural population is largely uneducated, making them highly superstitious and devoid of the necessary knowledge about sexual and reproductive health.

Abortions and pregnancies have been deprived of all necessary biological information due to a lack of medical facilities and education, and abortion is still seen as immoral or unethical behaviour among them.

However, on the other hand, people who support induced abortion take the legal rationale to support the process. They claim abortion is a human right. They believe that a woman has the right to make all decisions

regarding her sexuality, fertility, and reproductive health. Since every woman must have the freedom to make decisions regarding her own body, choosing to have an abortion is a matter of individual freedom, liberty, and life. Internationally, governments have also recognised the right to unrestricted use of one's reproductive organs, and they are now taking serious steps to defend women's rights.

In the historic decision in *Roe v Wade*[1] the Supreme Court of United States established that most of the state laws against abortion violate the right to privacy of the constitution. All state laws that restricted or outlawed abortion and were at odds with the decision were overturned by this bill. In this case, Joe Roe who is the plaintiff wanted to terminate her pregnancy because she contended that it was a result of rape.

The court in this case decided that while the state cannot restrict a woman's right to an abortion during the first trimester, it might regulate abortions in the second trimester. Third-trimester abortions, however, are subject to any limitations or prohibitions the state deems appropriate in ways that are reasonably related to maternal health. The court also invalidated various state limits on abortions in a lengthy series of decisions spanning from the mid-1970s to the early.

II. ABORTION IN INDIAN SOCIETY

In India abortion was legalised through the MTP ACT 1971[2] which was passed on 10 August 1971 by both the Houses of Parliament. The MTP ACT of 1971 is a law that regulates the termination of specific pregnancies by licenced medical professionals as well as any issues that may arise in connection with or as a result of such terminations. In the MTP ACT 1971. The act would permit abortion only up to 5 months of pregnancy which is 20 weeks under the following circumstances as per section 3 of the said act [3]

- When the continuation of pregnancy can cause grave danger to the life of the woman or her mental well-being.
- When there is a significant chance that the unborn kid will suffer from severe physical or mental defects.
- When a wife or husband fails to utilise contraceptives, or
- When pregnancy is brought on by rape or ineffective contraception.

The majority of Indian women continued to use unsafe abortion providers and self-induce abortions even after the MTP ACT of 1971's restrictions were implemented. The MTP ACT 1971 has been revised since unsafe abortion and self-induced abortion is now a leading cause of death and health issues for women of childbearing age.

The following are some of the positive modifications made by the new MTP Act:

- In some particular groups of women, the legal pregnancy termination age has been raised from 20 weeks to 24 weeks. Even though it makes no mention of specific special categories, it is likely to encompass people who have been the victims of rape, incest, disabilities, minors, etc.

- If the unborn child is proven to have a significant anomaly following medical ability, there is no maximum gestation age for termination of pregnancy. The term woman has been introduced in place of the term married in the revised MTP ACT.

- A specific emphasis is placed on upholding and honouring the woman's right to privacy within the confines of the law. However, if a minor must have an abortion to comply with legal requirements, parental or guardian assistance is required.

III. MAJOR CASE LAWS

1. Dr Rajeshwari v. State of Tamil Nadu: In this case, an unmarried 18-year-old girl was

pleading for the issuance of a directive to terminate the pregnancy of the child in her womb because carrying an unwanted pregnancy had caused her great stress and anguish and that the pregnancy had negatively impacted her mental health. The court in this case allowed the woman to terminate her pregnancy. The aforementioned instance demonstrates that, as long as the situation complies with the requirements of the Medical Termination of Pregnancy Act of 1971, a woman has the legal right to abort her unborn child in India.

2. Shri Bhagwan Katariya and Others vs State of MP[4]: In this instance, the woman was Navneet's wife, and the petitioners are Navneet's younger brothers. After the complainant became pregnant, her husband and other family members took offence to it, brought her for an abortion, and had it performed without getting her permission. In this case, the court held that section 3 of the Medical Termination of Pregnancy Act of 1971 gave a doctor the right to end a pregnancy under certain conditions and that if the pregnancy was ended legally, it was presumed that the woman had given her consent.

However, in this instance, the woman's consent was absent, the abortion left a scar on the woman's heart and mind, and as a result, the doctor is responsible.

This case supports the idea that the woman bearing the child has the discretionary authority to determine whether to have an abortion. No one else has the authority to make decisions concerning her reproductive health. A fundamental right to privacy is the right to an abortion, and the court is essential to protecting this right for women.

The unborn child's rights are protected by Indian law in addition to those of the pregnant lady. The INDIAN PENAL CODE OF 1860 establishes the position about the unborn.

Causing miscarriage – If a lady carrying a child is made to miscarry, the person who did it must

be held accountable if it wasn't done to save the woman's life. be penalised with either type of imprisonment for a term that may last up to three years, a fine, or both. If the woman gave birth too soon, she will also be subject to a fine and either type of imprisonment for a term that may last up to seven years.

From this provision, it can be enumerated that Indian law not only protects the right of a woman by legalising abortion but it also protects the right of the unborn. The unborn child's rights are protected by section 312 of THE INDIAN PENAL CODE 1860. A woman who miscarries herself is likewise criminal under provision 312 of the Indian Penal Code 1860, according to the explanation in this provision, which also punishes the person who causes miscarriage in women. Miscarriage and abortion are used interchangeably in this sentence. In this section, the rights of the unborn child are discussed in addition to the woman's control over her body. This law establishes the viewpoint from the perspective of the unborn and explains that if an abortion is performed in good faith and to protect the life of the woman, it is not illegal; however, if the abortion is not performed in good faith, the person who causes the abortion is punished with either imprisonment, a fine, or both. A mother who miscarries the child herself is also subject to punishment under THE INDIAN PENAL CODE 1860, including a seven-year prison sentence and a fine, according to the clause.

Hence the judiciary not only protects the right of the woman by legalising abortion but it also protects the right of the unborn child through its statutes.

IV. AFTERMATH AND SUGGESTIONS

India must first educate its citizens on the value of women's rights and reproductive health to come to an appropriate conclusion about the complex issue of abortion. Particularly those who still view abortion as unethical and are opposed to it, rural residents should be educated, and the state should take the

initiative in doing so. On sex and fertility, they should receive the appropriate education and information. Abortion, reproductive health, etc., and only then will they be able to comprehend abortion and how it relates to women's rights.

Along with educating the rural population, the government should also take steps to ensure that safe abortion services are available in India. Despite the country's legalisation of the procedure, women are still subjected to unsafe abortions, which are harmful to their health and a leading cause of death for women.

Therefore, the state should concentrate on educating its citizens about the current situation, the most recent laws, and their significance while also taking the necessary steps to provide adequate abortion services for women who are exercising their right to do so under certain exceptional circumstances as listed in section 3 of THE MTP ACT.

CONCLUSION

The decision to have an abortion should be left to the woman who is carrying the child because the topic of abortion has many facets.

The woman who is carrying the unborn child should be given the right to decide about her reproductive health and decide whether she wants to continue her pregnancy or terminate it. While granting this right to women, the law must also take into account the need to safeguard unborn children and ensure that their rights are not violated. In addition to ensuring that the rights of the unborn are not violated by giving women the option to end their pregnancies, the law must ensure that women who wish to have an abortion receive safe abortion services. As a society, we should provide the utmost love and care to lonely and scared women who want to undergo an abortion because of unwanted pregnancy and try to reduce their mental anguish and stress. we need to offer women with unwanted pregnancies with utmost love and support so that they can choose some other alternatives to abortion too. The law and society together

should combat this issue and help in finding appropriate solutions.

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