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A SOCIO LEGAL ANALYSIS OF THE DECRIMINALIZATION OF ABORTION IN INDIA

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ABSTRACT

In India, the legalization of abortion is regulated by law, court interpretations, women's reproductive rights, and healthcare access. Reproductive autonomy is influenced by the Medical Termination of Pregnancy Act, 1971, which was updated in 2021, and the abortion criminal law of the Indian Penal Code. The research indicates that, despite legal reforms, secure and legal abortion services are impeded by social, cultural, economic, and gender barriers. It assesses the extent to which physiological autonomy, dignity, privacy, and equality are safeguarded by human rights, constitutional principles, and legislation. Secondary literature, policy papers, case law, and statutes are employed in doctrinal and analytical research. India has expanded abortion access; however, comprehensive legalization and rights-based legal reforms are required to eliminate stigma, promote equitable healthcare, and achieve reproductive justice for all pregnant women.

Keywords: *Abortion; Decriminalization; Reproductive Rights; Medical Termination of Pregnancy Act; Women's Rights; Bodily Autonomy; Reproductive Justice; Constitutional Law; Healthcare Access.*

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1. INTRODUCTION

The Indian abortion laws have evolved in accordance with the evolving social values and the respect for the autonomy and dignity of women. Abortion was prohibited by the Indian Penal Code of 1860, with the exception of specific circumstances. A rights-based paradigm is necessary in order to accommodate reproductive rights, constitutional law, and medical advancements, as opposed to a punitive one. While decriminalizing abortion, it is imperative to maintain a balance between the public health interests of the state, expectant woman, and fetus.

The Medical Termination of Pregnancy (MTP) Act of 1971 and its subsequent amendments, particularly the 2021 Act, significantly increased the availability of safe and legal abortion facilities in India. In spite of these modifications, the Indian Penal Code continues to criminalize abortions in a manner that exceeds the MTP Act, which causes confusion among women and physicians. Due to stigma, ignorance, unequal healthcare access, and legal constraints, numerous women, particularly those residing in impoverished communities, are unable to exercise their reproductive rights in a safe and autonomous manner. These challenges illustrate that legislative reform alone is insufficient to resolve issues in the absence of institutional and societal reforms.

2. HISTORICAL DEVELOPMENT OF ABORTION LAW IN INDIA

Position under the Indian Penal Code, 1860

Before the MTP Act of 1971, abortion in India was regulated by Sections 312–316 of the IPC of 1860. These laws prohibited abortion unless it was necessary to save the expectant woman. Criminal charges may be levied against individuals who induce miscarriages or consent to abortions.

Reproductive healthcare and unwanted pregnancies were disregarded by the criminal justice system. In filthy settings, numerous women were subjected to unsafe, unlawful abortions by untrained physicians. Maternal mortality and morbidity resulting from botched abortions are among the public health concerns in India.

The Shantilal Shah Committee (1964)

The Shantilal Shah Committee was established by the Indian government in 1964 to evaluate abortion laws and suggest modifications to mitigate the increasing number of unsafe abortions and health risks. After conducting an examination of the medical, legal, and social aspects of abortion, the Committee determined that penal laws do not safeguard the health and reproductive rights of women.

For social, medical, and humanitarian reasons, certain Committee members advocated for the legalization of abortion. Its primary recommendations include:

- **Reducing maternal deaths:** Aim to lower fatalities linked to unsafe and unlawful abortion procedures.
- **Safeguarding women's health:** Ensure both physical well-being and psychological stability of expectant mothers.
- **Curbing unsafe practices:** Discourage secretive and hazardous abortion methods that endanger women's lives.
- **Supporting family planning:** Provide a framework that aids reproductive choices and contributes to population regulation.
- **Permitting medical termination:** Allow abortion in circumstances where:

The pregnancy poses serious risks to the woman's life or health.

Conception results from sexual violence such as rape.

Severe fetal abnormalities make continuation of pregnancy unviable.

The Medical Termination of Pregnancy Act of 1971, which was implemented following the Shantilal Shah Committee's comprehensive legal reform, prioritized public health and abortion services over punishment. The Act enhances India's reproductive healthcare system by balancing the interests of the State and expectant women, and it permitted medical pregnancy termination in certain circumstances.

3. MEDICAL TERMINATION OF

PREGNANCY ACT, 1971

The 1971 MTP Act covers Indian abortion. After the Shantilal Shah Committee recommended that unsafe and unlawful abortions were increasing maternal mortality and disease, India passed the MTP Act in 1964. The law took effect April 1, 1972. Sometimes it allows safe, legal, medically supervised abortions.

Conditions for Legal Termination of Pregnancy

Action allowed abortion under conditions, not rights.

Initial conditions:

- **Termination up to 20 weeks:** The law permitted medical termination of pregnancy until the twentieth week of gestation.
- **Requirement for early stage**: For pregnancies not exceeding twelve weeks, the approval of a single Registered Medical Practitioner (RMP) was considered adequate.
- **Requirement for later stage:** For cases falling between twelve and twenty weeks, the concurrence of two RMPs was compulsory, both certifying in good faith that the statutory conditions for termination were fulfilled.

Grounds for Medical Termination of Pregnancy

Section 3 of the Act allows abortions for certain reasons:

Risk to the Life of the Pregnant Woman

If their lives are in danger, pregnant women can abort. The law favored women over kids.

Grave Injury to Physical or Mental Health

Physical or mental health abortion for mothers. The Act allowed abortion when necessary because pregnancy is emotionally and physically burdensome.

Pregnancy Resulting from Rape

The Act felt rape-induced pregnancies caused mental anguish. Sexual abuse pregnancies can cease.

Failure of Contraceptive Method

A pregnant married woman without birth control may suffer mental illness. To promote family planning, the Medical Termination of Pregnancy (Amendment) Act, 2021 removed the single-women exclusion.

Substantial Risk of Fetal Abnormalities

If the fetus had major physical or mental impairments that limited functioning, abortion was permissible.

4. CONSTITUTIONAL PERSPECTIVE ON

ABORTION RIGHTS IN INDIA

Article 21: Right to Life and Personal Liberty

Constitutional Article 21 guarantees life and liberty. The Supreme Court says this statement protects dignity, privacy, bodily integrity, and reproductive autonomy. Rights recognize women's reproductive autonomy.

Right to Privacy

The Supreme Court ruled in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) that Article 21 protects privacy. The Court ruled that reproductive choices influence privacy and rights.

Article 14: Right to Equality

Article 14 guarantees legal equality and protection. Abortion restrictions based on marital status or other irrational categories may violate this constitutional right.

Article 15: Prohibition of Discrimination

Article 15 bans sex discrimination. Because they mostly affect women, abortion restrictions must be construed to preserve reproductive rights and promote gender equality.

5. CONCLUSION

Decriminalizing abortion in India has improved women's access to safe healthcare, bodily autonomy, and reproductive rights. The Medical Termination of Pregnancy Act, 1971, its modifications, and progressive court interpretations show a steady shift from a punitive approach to a rights-based framework that recognizes reproductive choice as a right to life, dignity, privacy, and personal liberty. Stigma, inadequate healthcare, lack of information, economic inequality, and rural-urban access barriers limit abortion rights. To achieve reproductive justice and decriminalization for all Indian women, implementation mechanisms, healthcare services, public awareness, and equitable access to safe and cheap abortion services must be improved.

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