

Law of abortion in India

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ABSTRACT

The term Abortion has been derived from a Latin word 'abortus' means an object which had been detached from its proper site. Abortion refers to the removal of product of fertilization from the uterus. It is the ending of pregnancy at any time before the fetus has achieved the stage of viability. According to Webster's New International Dictionary 'abortion' means an act of giving premature birth, specifically the expulsion of human fetus prematurely at any time before it is capable of sustaining life. Abortion is a controversial and sensitive issue which involves religious, moral and social judgments on which opinions strongly differ. The laws on abortion was developed in the late nineteenth century when female's rights groups, doctors and lawyers started an organized abortion reforms movement to make the laws on abortion because many of them had often witnessed the deadly complications resulting from illegal abortions. But also at the same time some Female's right organization also began to see abortion reform as a pivotal step towards the goal of equality between the sexes. They argued that the female must be able to control their pregnancies in order to secure equal status. In addition new concerns about the explosive population growth and its effect on the environment increased public awareness of the need for Birth Control. At the same time, other countries developed far more modern laws related to abortion. In Japan and some Europeans countries, abortion was available on demand, and Western Europe, abortion was only permitted to protect the mother's health. The issue of public awareness was also increased through the two incidents of 1960's and 1961 where a great number of children was born with physical defects because due to the drug thalidomide, used to treat nausea during pregnancy and German measles epidemic caused thousands of children to be born with defects. Pregnant female who were affected by these incidents could not seek abortion because of due to the presence of strict laws against the abortion at that time.

Introduction

Abortion often invites excitement debates amongst intelligentsia. The general question around which the discourse revolves is of morality, female's right, life of fetus and state's authoritative role in regulating the female's reproductive right. Abortion is derived from the Latin word 'aborir' which means, "to get detached from the proper site"¹. Abortion means intentional removal of a fetus from mother's womb but not considers the accidental premature birth nor spontaneous expulsion of the fetus due to disease, malfunction. The World Health Organization places abortion within the category of fertility regulation². Abortion is if two kinds one is spontaneous abortion and the other is induced abortion. A spontaneous abortion is one that occurs naturally as a result of certain pathological condition often beyond the control of the pregnant female and physical³. The second one is induced abortion which means the deliberate interruption of pregnancy by artificially inducing less of the fetus. The legality of an induced abortion depends on the existing laws of a country. In some countries only a therapeutic abortion is permitted to save the life of mother, is legal. In some other countries an induced abortion is permitted not only to safe-guard the mother's physical and mental health but also on humanitarian ground.

During the last few years many countries have liberalized their abortion laws. Many countries are having very restricted abortion laws and there are many countries where abortion is available at the request of female. Among all those countries India made the abortion laws liberal in 1971 by enacting Medical Termination of Pregnancy Act which was designed to create certain exceptions to the strict provisions of IPC and PNMT Act 199⁴.

Premature birth approach in India is steady with protecting regenerative rights as visualized by Worldwide Meeting on Populace and Advancement (ICPD) and comparative other universal understandings. It doesn't advocate fetus removal as a family arranging measure. Or maybe, it empowers the advancement of family arranging administrations to counteract undesirable pregnancies and in the meantime perceives the significance of giving protected, moderate, available and worthy premature birth administrations to ladies who need to end an undesirable pregnancy⁵

There are different laws of abortion in India these are as follows:

¹websters new dictionary and threshures DS max inc.

²Edwar Lawson, Encyclopedia of the USA 2000 Human Rights

³ S. Chandrashekhar, Abortion in crowded world 1, (George Allen &Wnwin, Ltd. London, 1979)

⁵1.P.C.s. 312 : Whoever voluntarily causes a woman with child to miscarry shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term

The Indian penal code, 1860

Under Indian penal code, 1860 Sec. 312 to 316 deal with penal abortion. These Sections comes under the chapter which deals with offences affecting human body.

Section 312 of Indian penal code simply said that a person, who voluntarily causes a miscarriage to a female with child, will be punished with the imprisonment for three years *or* fine *or* with both. The offence is non-cognizable, Non-bailable and non-compoundable. If the female is quick with child the sentence may go up to seven years *and* fine, unless the miscarriage is caused in good-faith for saving the life of the female. Any female who causes miscarriage to herself will also be liable under this Sec. by virtue of the explanation appended thereto. . It is evident that Sec. 31⁶ comes into play when the abortion is done with the consent of the aborted female. To appreciate fully the implications of Sec. 312 the words "voluntarily," "with child" "good-faith" and "quick with child" may understood first. Sec. 39 of the Penal Code defines "voluntarily," as "a person is said to cause and effect "voluntarily" when he causes it by means whereby he intended to cause it⁷, or by means which, at the time of employing those means, he knew or had reasons to believe to be likely to cause it." It would be noted that word "voluntarily" has been defined in relation to the causation of effects and not to the doing of acts form which those affects result. It has been given a peculiar meaning differing widely from its ordinary meaning.

The second requirement of Sec. 312 of Indian penal code is that the female should be "with child" or "quick with child." A female is "with child" means as soon as soon as she is pregnant and 'Quickening' means that the movement of the fetus has taken place or the embryo has fetal form. Sec. 52 of the Penal Code defines "good faith". It lays down "Nothing is said to be done believed in 'good faith' which is not done or believed without due care and attention."

The medical termination of pregnancy (MTP) Act, 1971

The idea of a liberalized law of abortion was first mooted by the Central Planning Board of the GOI in 1964 as a family planning measure⁸ In 1964 the GOI constituted the Shanti Lal Shah committee to suggest measures for reform in the existing law of abortion. The recommendations of the Committee were accepted and the Medical termination of pregnancy Act was passed in 1971 and came into operation on 1st April 1972. This Act was made to avoid the misuse of induced abortion and to soften the strictness of the law of abortion contained in the Indian Penal Code, 1860 the Medical Termination of Pregnancy Act, 1971 was passed. The MTP Act consisting of only eight Sections. This authorization has been hailed as a noteworthy milestone in India's social enactment and a broad measure guaranteeing the ladies in India opportunity from undesirable and undesirable pregnancies. The Medicinal Termination of Pregnancy Act, 1971, furnishes ladies with legitimate arrangement to premature birth. It gives that a pregnancy might be ended where the length of the pregnancy

does not surpass twenty weeks, if at least two restorative practitioners are of the sentiment that the continuation of the pregnancy would include a hazard to the life of a pregnant lady or grave damage to her physical or psychological well-being [as per section 3(2)(i)] or when there is a significant hazard that if the youngster were conceived, it would experience the ill effects of such physical or mental irregularities as to be genuinely incapacitated [as per Segment 3(2)(ii)]. It can be pregnancy either through rape or where a pregnancy occurs as a result of failure of any device or method used by any married female or her husband for the purpose of limiting the number of children.

The Pre-Natal Diagnostic Techniques Act, 1994

In India the use of sex selective test starts with the introduction of amniocentesis. A ban on government institutions providing such services, led to the spread of private diagnostic centers offering cheap sex determinative tests to the public. This causes corresponding decline in the female population in society. To equalize the phenomena of female-fetus abortions, female's rights groups and social activists persuade the Parliament for over a decade to get a law prohibiting sex-determination tests on board. As a result of this per suing the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in July 1994.

The objective of the PNDT Act was therefore twofold. First, to regulate pre-natal diagnostic techniques to limit it to the detection of genetic and metabolic disorders, chromosomal abnormalities, congenital malformations or sex linked disorders. Secondly, to prevent the misuse of pre-natal diagnostic techniques technology for the purpose of pre-natal sex selection which would results to sex-selective abortions? In 1998, a Public Interest Litigation, CHEAT v Union of India⁹ was field in the Supreme Court for directions to implement this Act. The Court passed a favorable interim order in May 2001 directing the Central Government and states to take all necessary steps to implement this law.

When the Act was implemented it revealed some loopholes and problems inherent in the Act. The first one was that there were no clear provisions regulating preconception techniques in the Act. Second one was that the Act, drafted at the time when amniocentesis was considered to be the main threat was incorrectly drafted as far as the use of ultrasound tests were concerned and obstructed female's access to routine ultrasound tests. Third one was the Appropriate Authorities, constituted under the Act were abusing their powers and harassing practicing doctors. To eradicate these problems in the Act the GOI under the direction of the Supreme Court, in the year 2000, amended the PNDT Act. The amendment Act was finally passed on February 14, 2003. The PNDT Act now stands converted to the "Pre-Conception and Pre -Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT)". Even with the Amendments, this Act remains extremely difficult to implement. The sex of the fetus is still revealed behind closed doors.

Important Features of the PC & PNDT Act, 2002

⁹AIR 2001 SC

⁶RatanLal and DhirajLal, The Law of Crimes 81 (1971 edn.)

⁷section 39 of ipc

⁸Amar Jesani, and Adityler, "Female and Abortion", 27 Economic and Political Weekly (1993)

Under the guidelines of Supreme Court order and Central Supervisory Board recommendations the Parliament on 20th December 2002, passed the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2002. The objectives of the Act are as follows:

- Ban the pre-conception sex selection techniques
- Prohibit the misuse of pre-natal diagnostic techniques for sex selective abortions.
- Regulate the pre-natal diagnostic techniques for the appropriate scientific use for which they are intended.
- Ensure the effective implementation of the Act at all levels.
- One of the important features of the Act is that it has included within its ambit the recently developed techniques of sex-selection before conception and at the time of conception like Ericsson method¹⁰ and Pre-implantation Genetic Diagnosis (PGD).

There are some other important features of this Act are like The Act provides for compulsory registration of all Diagnostic Laboratories and The manufacturers of ultra-sound equipment would now be required to sell their products only to those clinics that are registered. All hereditary Advising Focuses, hereditary Research centers, Hereditary Facilities and Ultrasound Centers, independent of whatever they are included as respects determination for gynecological or different purposes, would now need to keep up records of the considerable number of tests directed by them. Any individual leading ultrasound examine/test/methodology on any pregnant lady will keep total record of such output/test/technique showing her total name, address, spouse's name just as name and address of the alluding Restorative Specialist/Specialist, the reasons requiring such sweep/test/system and so on. The Demonstration explicitly accommodates the disallowance of imparting the sex of the baby. It expresses that no individual can impart to the pregnant lady concerned or her relatives or some other individual the sex of the embryo by works, signs or in some other way while directing pre-birth symptomatic techniques. The Demonstration likewise gives that just qualified people can utilize pre-birth symptomatic procedures.

The Act expressly provides for the prohibition of communicating the sex of the fetus. It states that no person can communicate to the pregnant female concerned or her relatives or any other person the sex of the fetus by works, signs or in any other manner while conducting prenatal diagnostic procedures.

Punishment Under the PC & PNDT

Act Any medicinal geneticist, gynecologist, enrolled restorative experts or any individual who possesses hereditary facility, focus or research center or utilized in it or renders his expert or specialized administrations, on privileged premise or something else, and who negates any of the arrangement of the Demonstration or tenets will be culpable with detainment

¹⁰¹⁰ An application for registration has to be made to designated Appropriate Authority with prescribed application fees and obtain certificate of registration which has to be displayed at conspicuous place and in addition to this, a notice in, English and in local language has to be displayed for the information of public, to the effect the disclosure of the sex of fetus is prohibited

for a term expanding upto 3 years with a fine which may stretch out to Rs. 10,000/- and any ensuing conviction with detainment upto 5 years and fine upto Rs. 50,000/- . Likewise, name of the Enlisted Medicinal Professional sentenced by the Court will be accounted for to Therapeutic Board for transitory retraction of restorative enrollment for time of 2 years for the primary offense and for all time for the ensuing offense. Any individual who look for PNDT procedures on any pregnant lady, including such lady, except if she was constrained to experience such systems for reason other than determined before will be culpable with comparable punishment and fine. Court will assume, except if the opposite is demonstrated, that the pregnant lady has been constrained by her significant other or relatives to experience PNDT and such individual will be subject for abetment of offense. Each offense under this demonstration will be non-bailable, cognizable and non-compoundable.