

**THE HARDEST SIN:
ON MOTHER AS WELL AS THE UNBORN**

-Vrushali Agrawal¹

ABSTRACT

We live in an era where everybody is talking about women's rights, but the basic right of bodily autonomy, especially with respect to reproductive rights, is subject to huge contradictions. Abortion is one of the most controversial rights that are being debated for years. It is a debate between ethical concerns and right of freedom. Abortion is treated as a right given to women in order to choose between what she wants. But it has been sometimes forcibly induced on a woman. Sometimes women are forced to have abortion against their will and with unlawful methods. Women are forced to have abortion from unskilled medical professionals and fraud doctors. this forceful abortion is an offence in the Indian Penal Code and is punishable.

Background:

Before 1970s unofficial abortions were noted in many countries without any public opinion or medical advice which increased the rate of unsafe and illegal abortions which lead to many deaths. New York and California also faced twenty percent of medical problems due to unsafe abortions. In order to eliminate this many provisions were taken in order to make women choose what she wants. In 1965 Griswold v. Connecticut constitution gave this legal and constitutional right granting the couple or the women complete privacy and was asked to have birth control from their trusted doctors. According to a study published last year by Guttmacher and Population Council in The Lancet, a renowned medical journal, 15.6 million abortions took place in India in 2015. That is more than the populations of Belgium, Greece, Sweden, Portugal and Hungary. Now compare this to the 7 lakh figure the Centre gives for the total number of abortions in India in 2015 in the National Family Health

¹ 4th year BA LLB, Des Navalmal Firodia Law College, Pune

survey (NFHS). The glaring gap between the two studies only highlights the stigma against abortions in the minds of both the woman and the nation.

Statistics of abortion in the world:

Nearly twenty-five million unsafe abortions take place annually. According to World Health Organisation statistics², the risk rate for unsafe abortion is 1/270; according to other sources, unsafe abortion is responsible for at least 8% of maternal deaths. Unsafe abortion is a major cause of injury and death among women worldwide. It is estimated worldwide, 48% of all induced abortions are unsafe. The British Medical Bulletin reported in 2003 that 70,000 women a year die from unsafe abortion.

Statistics of abortion in India:

Research shows more than eighty per cent of women do not know that abortion is legal in India. Thirteen women die every day in India due to unsafe abortion. Nearly 6.4 million pregnancies are terminated every year in India. Thousands of deaths are reported from unsafe abortions due to lack of trained abortion doctors.

Abortion in India 1970-2000:

Abortion became legal in India in 1971 after the Medical Termination of Pregnancy Act, 1971 was passed. Medical Termination of Pregnancy Act 1971 provides the legal framework for provisions of abortion in India. Estimates dating from the beginning of the 1990s to more recent years are largely speculative and have ranged from 2-11 illegal abortions performed for every legal abortion.

Abortion law reform since 2000:

The Indian Parliament enacted the Medical Termination of Pregnancy (Amendment) Act 2002 and amended Rules and Regulations 2003. After the amendment, abortion facilities decentralised from state level to district level providing the facility at districts also. Public hospitals are provided at district level also to give proper facility regarding abortion in these areas.

Current status of abortion policy in India:

² Published by Guttmacher and World Health Organisation Jan 2012(2)

The Medical Termination of Pregnancy Act, 1971 mandates the states to provide this facility at all public hospital. But due to the poor quality standards in the public sector, private sectors are preferred but even private sectors fail the self-discipline necessary to adhere to the quality standards specified in law.

Termination of pregnancy:

In *Dr. Mangla Dogra v. Anil Kumar Malhotra & Ors*³, the Punjab and Haryana High Court held that:- “An unwanted pregnancy as per Explanation II to S. 3(2) of the Act is a grave injury to the physical or mental health of the woman. A woman is not a machine in which raw material is put and a finished product comes out. She should be mentally prepared to give birth to a child.”

Abortion is usually done before the foetus gets to twenty-four weeks old. It is either spontaneous or induced abortion but abortion refers to the induced type and the spontaneous one is called miscarriage.

A miscarriage twenty-four week after conception between that time, and before the expiration of the sixth month, when the child may possibly live is termed as abortion⁴.

The artificial or spontaneous termination of a pregnancy before the embryo or foetus can survive in its own outside a woman’s uterus.

It also means the deliberate termination of a human pregnancy which also means intentional killing, by whatever means, of an unborn child at whatever stage of his or her development from conception up to birth and including birth. Foeticide and infanticide still prevails in many backward parts of the county. It is the abortion of a girl child in the womb.

Abortion as a right of woman:

Abortion has been legal in India for 48 years now since the Medical Termination of Pregnancy Act (MTP Act) came about in 1971 but it is yet to become a woman’s right. This is absurd simply because abortions are so common place. It is as if once a woman conceives,

³ *Dr. Mangla Dogra v. Anil Kumar Malhotra & Ors* [(2012)167 PLR 267]

⁴ Blacks law dictionary (second edition).djvu/791

she immediately relinquishes the right to take decisions regarding her body; her entire identity must now be subsumed into her role as an engine of reproduction and society must do all it can to keep her strapped to that role,' says Shuma Raha⁵. Abortion is a right of the woman and the consent of the husband is not necessary for abortion. In 2011, the Punjab and Haryana High Court had deliberated on “whether the express consent of the husband is required for unwanted pregnancy to be terminated by a wife?” Supreme Court upholds Punjab and Haryana High Court’s ruling that a woman does not need her husband’s consent to abort. A bench of the Chief Justice Dipak Mishra, A.M.Khanwilkar and D.Y.Chandrachud, dismissed on Friday, a Civil Appeal, which has been pending since 2012, seeking to recognise husband’s consent to terminate a pregnancy. The Punjab and Haryana High Court noted that under Section 3(4)(b) of the MTP Act, only the consent of the pregnant woman undergoing the termination of pregnancy is required. Human rights are natural rights and thus a woman has a natural right in relation to her body which includes her willingness to be a mother or her unwillingness to be a mother.

In, *Suchita Srivastava and Ors. v. Chandigarh Administration*⁶, the Hon’ble Supreme Court ruled that “There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilization procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”

Forced abortion:

Forced abortion is a very serious issue prevailing in the world. A forced abortion occurs when a woman wants to carry her pregnancy, but is required to terminate it against her will. If a

⁵ <https://www.rediff.com>>column

⁶ *Suchita Srivastava and Ors. v. Chandigarh Administration* [(2009) 9 SCC 1]

woman wants to continue with the pregnancy, then forcing her not to do so represents a violation of the woman's bodily integrity and aggravates her mental trauma which would be deleterious to her mental health. Intentional termination of pregnancy without the prior and informed consent of the women and without a fully informed decision taken by the victim is termed as forced abortion.

A forced abortion may occur when the perpetrator causes abortion by force, threat or coercion, or by taking advantage of woman's incapability to give her consent, or where she gives her consent under threat.

The use of force and domestic violence to compel abortion is a widespread problem, especially in the domestic sex-trafficking industry and sometimes within families. While many may argue that the major reason for the rise in the number of forced abortions is the easy access for young couples in today's times to fulfil sexual desires, many critical aspects are often overlooked. Adolescent girls and women from poor and uneducated parts of the society are the main victims of the forced abortion. Partners, family members, or others in a woman's community selfishly pressure her to undergo an abortion she does not want. Forced abortion is not only carried out by the husbands but also the family members of the woman at large. This is mainly due to the pressure of the society that they have to forcefully abort the child against the will of the mother.

Types of forced abortion:

- **Illegal abortions:** Illegal abortions means where the consent of the mother is not taken into consideration .where abortion is done without the full knowledge of the mother is an illegal abortion. Illegal abortions are done by the husbands or the family members of the woman. When they do not want the woman to have the child they forcefully abort the child without the consent of the woman. These are done at the hands of the unqualified persons because in public or private hospitals many formalities are done before the process of abortion. Hence illegal abortions are done by the unqualified persons or fraud doctors who do not carry out any formalities before abortion.
- Another type of forced abortion is voluntarily causing miscarriage which is also called as induced abortion. An early, unintentional end to a pregnancy when the baby is born too early and dies because it has not developed enough. It takes place after twenty-four weeks of pregnancy. Sometimes by misconduct or without the full knowledge of

the woman the unborn foetus is destroyed which is called as voluntarily causing miscarriage without the consent of the mother. When the miscarriage is done because there is some threat to the health of the mother is an intentional end to the pregnancy. If there is threat to the mother the unborn can be destroyed even without her consent. The unborn child must not be destroyed unless it is for the safety of the mother.

Why is it termed as forced abortion?

In many case, the woman wants to keep the child but is forced by her husband or her family members or in-laws or society to abort the child due to various reasons. For legally aborting the child, consent of the mother is necessary and clearly in this situation the woman will not give the consent as she wants to keep the child. In such cases the abortion is done at illegal places such as with unqualified or fraud doctors and not at places mentioned in the Medical Termination of Pregnancy Act, 1971⁷. In this abortion unsafe methods are used to terminate the pregnancy and to destroy the foetus and such methods are not safe for the health of the woman. It also affects the mental and emotional state of the mother and can also lead to suicides and deaths.

Reasons of forced abortion:

There are various reasons for forcefully aborting the child. They are done without the consent of the woman and without the full information provided to the woman.

Various major reasons of forced abortion are:

- Pregnancy caused due to rape of the rape victims,
- failure of contraceptive used by married woman,
- pregnancy of unmarried woman or young girl,
- the society does not accept the child due to various reasons,
- pregnancy out of affairs which are not accepted by the family or society at large,
- the husband does not want to keep the child and forcefully aborts the child without the consent of the mother,
- lack of knowledge about the legality of abortion and availability of safe services are also causes of death.

⁷ The Medical Termination of Pregnancy Act, 1971

- pregnancy due to lack of knowledge and no sex education,
- Economic issues including poverty and insufficient funding.

The main reasons for forced abortion are social, religious and economic factors. Many of them include the morals and values of the society.

Complication of abortion due to unsafe method:

Pain is a normal problem due to the abortion process. The most common is bleeding. Bleeding occurs normally for a few weeks. In cases of excessive bleeding, there are chances that the uterus may not have been emptied completely. The uterus may be punctured especially during surgical termination of pregnancy⁸. Pelvic inflammatory disease. This disease affects the vaginal area⁹.

Adverse effects of unsafe abortion:

There are many harmful effects of abortion such as injury to the uterus, infections and bleeding which degrades the physical health of the woman. The uterus may be punctured during surgical termination of pregnancy if done by unprofessional doctors. Further infertility in some cases is also a serious issue faced after abortion. It becomes difficult for the woman to conceive the next time after abortion. Mental health of the mother also gets disturbed as in case she wanted to keep the child and was forced to abort it. Suicides are also recorded due to forced abortion as the mental and emotional stability of the woman is disturbed and due to depression they get suicidal. Death of the mother is the most common result of forced abortion. There is a loss of two lives, of the mother and the unborn.

Medical Termination of Pregnancy Act, 1971:

Abortion has been legal in India since 48 years after the passing of The Medical Termination of Pregnancy Act. In 1969 medical termination of pregnancy bill was introduced in Rajya Sabha and Lok Sabha and passed by Indian parliament in august 1971. Medical termination of pregnancy act was enforced from 1st April 1972. The Medical Termination of Pregnancy Act, 1971 states a statute to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. According to

⁸ Bodo 1998 page 159

⁹ Shirleen 2003 page 40

this act termination of pregnancy was allowed till twenty weeks of pregnancy. The law empowers state governments to regulate abortion services.

According to this act the consent of the woman is necessary for termination of pregnancy. In case it is done without the consent of the mother it is illegal in the eyes of law and is punishable under Indian penal code. In case of a girl below eighteen years, a written consent of her guardian is required to carry the termination of pregnancy.

Termination of pregnancy under this act can only be done at a place which the government is convinced to be safe and hygienic.

According to a case where the petitioner, a rape survivor, who wished to remain unidentified, approached the Supreme Court seeking permission to abort her 24-week abnormal foetus. The petition challenged the 46-year-old Maternal Termination of Pregnancy Act that does not permit abortion of a foetus after 20 weeks. The Supreme Court ruled in favour of the petitioner after the medical board submitted a report stating that continuing with the pregnancy would put the mother's life at risk.

Following this amendment was made in 2017, as the Medical Termination of Pregnancy Act (Amendment) Bill, 2017. It amended the period of termination of pregnancy from twenty weeks to twenty-four weeks.

Anything which is not followed according to this act shall be punishable and which results into forced abortion which is an offence under Indian penal code.

Legislative status of abortion in India:

In 2017, Supreme Court in a judgment, permitted married women to have abortion depending on their own choice. An abortion which does not fulfil the conditions of the MTP Act is considered a crime under the general law on crimes in India. Forced abortion is an offence under Indian Penal Code. Charges include:

Section 312- whoever voluntarily causes miscarriage of a woman carrying child without it being in good faith is punishable under Indian Penal Code¹⁰,

¹⁰ Punished with imprisonment of either description for a term this may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 313 – causing miscarriage without the consent of the woman¹¹, and

Section 316 – Causing death of quick unborn child by act amounting to culpable homicide¹².

Prevention of forced abortion:

In 21st century also forced abortion is one of the main topics of debate even after legalisation of abortion in India. Forced abortions are still carried out in backward sections of the society at a large number. Large numbers of these cases were recorded before the Act but there has been a significant decline in the number of cases of forced abortion. Forced abortions must be stopped as it violates the rights of woman as well as the unborn child. Right to life is also given to the unborn which is completely violated because of abortions and it is also the right of a woman over her body as to if she wants motherhood or not.

Measures should be taken in order to reduce the number of forced abortions. The laws must be made rigid in order to illegal abortions. Strict punishments must be given to the person forcing it and also to the doctor performing the surgery.

Poor and educated sections of the country must be given education about their fundamental rights and as to how abortions are legal in India and that they can seek proper facilities from the hospitals given under MTP Act. Providing the necessary support in the form of financial aid and psychological support to mothers contemplating abortion could serve as the best way to curb such deaths resulting from abortion.

¹¹ Punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

¹² Punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.