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**THE DILEMMA OF ABORTION****# Abstract**

*Abortion has always been a controversial issue; its definition always contained scientific reviews, societal norms, and political opinion. This controversial issue has not only been a medical problem, but also a societal, ethical and moral issue.*

*The article contains the definition of abortion, the history of abortion, the recent statistics on abortion, the laws made on abortion for the protection of women in different countries, and the perspective of women, as well as men on abortion, is being discussed. The cases related to the topic is also been discussed. But overall, the focus of this article will be on India, observing the changes that took place in the past and what are the changes that occurred to date as well as what changes can happen and should take place in the coming future.*

**# Keywords**

abortion, controversial issue, moral issue, ethical issue, societal issue

**# Introduction**

Abortion is a medical process that helps a woman terminate her fetus by removing or expulsion of an embryo or fetus. According to Harvard Medical School, a process through which pregnancy tissue is removed, a product of conception or fetus or placenta (afterbirth) from the uterus as well are removed. Abortion should be before the fetus develops sufficiently to survive on its own, therefore, the pregnancy shall be removed within 24 weeks of pregnancy. There are two methods through which pregnancy can be drawn:

1. Medical abortion- medicine is taken to end the pregnancy; the clinic or the hospital prescribes the medicine. It doesn't involve any kind of surgery or an anesthetic.
2. Surgical abortion- the pregnancy is removed by surgery, done by:

- local anesthetic (to numb the cervix)
- conscious sedation (where you're relaxed but awake)
- deep sedation (when you're asleep)

A type of abortion that naturally occurs is 'miscarriage', also known as 'spontaneous abortion'. If abortion happens after 24 weeks, the same terms are used but, it'll be considered a criminal act and one can be punished.

### **#The Past of Abortion**

Prior to the 1800s, women curers in Western Europe and the U.S provided abortions and trained other females as well, without the interference of law. But in 1803, the first anti-abortion law was passed in Britain becoming stricter as time passed. Till 1880, the U.S declared most abortion laws illegal, except those, which were considered necessary for saving the life of women. Compared to one and a half million today, in the 19th century doctors estimated around two million abortions in a year took place in the U.S. The solutions used by women were very deadly, like inserting knitting needles or coat hangers into the vagina and uterus or swallowing dangerous drugs or chemicals to end the pregnancy, or douching with dangerous solutions such as Iye. This can be difficult for these women to seek medical treatment.

### **# Statistics of women aborting children around the world**

According to WHO, six out of ten of all unintended results in an induced abortion, abortion is safe, if methods suggested by WHO are used. As about 45% of total abortion is unsafe and around 97% of such abortion happens in developing countries. Every year, around 73 million induced abortions take place around the world. Around 61% of all unintended pregnancies, 29% of all pregnancies, result in induced abortion.

Every year, 4.7-13.2% of maternal deaths were caused by unsafe abortion. The study estimated that every year, developed countries had 30 women die for every 100,000 unsafe abortions. Similarly in developing countries, 220 out of 100,000 deaths are because by unsafe abortion. In 2012, it was estimated that in developing countries, every year, 7 million women got treated in hospital facilities for unsafe abortions.

According to United Nations data, Russia has the highest rate of abortion, i.e., 53.7 per 1,000 women. Vietnam on second with 35.2, and the third is Kazakhstan with 35. While the lowest abortion rate was found in Mexico with 0.1, followed by Portugal and Qatar in second and third, with 0.2 and 1.2. Therefore, there are countries such where countries like Brazil, Panama, and Poland are living with 0.0 rate of abortion.

In the latest survey by the National Family Health Survey of 2019-2021, women carried out abortion by themselves without visiting clinics or hospitals, the percent of such abortions are 27%. According to the United Nations Populations Fund's (UNPFA) State of the World

Population Report 2022, almost 8 women die each day in India because of unsafe abortions, also between 2007-11, the percentage of abortions declared unsafe was around 67%.

### # Laws on Abortion

India, the past considered abortions as a taboo. Mahatma Gandhi, the nation's father quoted, that he was very sure one day abortion would be a crime. But his prediction is proved wrong as the time is evolving, people are becoming more liberal and apparently many laws have developed, making abortions to be legal in India.

According to Indian Penal Code, 1860: Induced abortion is a criminal offense, except in cases where abortion is done to save the mother's life mentioned under section 312 to 316. Person causing voluntary miscarriage can be punished with three years of imprisonment or will be fined or both. The punishment extends to seven years if the mother was quick with the child, i.e., in case the mother feels the fetus.

Under the Constitution of India, Article 21 states that no person shall be deprived of his right to life and personal liberty excluding the procedure established by law. The dilemma of abortion laws are the rights a mother has in order to abort and same goes with the right of the unborn child to live. In the recent landmark judgements of the Supreme Court, Suchita Srivastava, held Article 21 of Indian Constitution guaranteeing right to life and extends to liberty of a woman to make reproductive choices. This includes privacy rights, personal liberty, dignity and bodily integrity of a woman mentioned under Article 21.

Also, in Justice K.S Puttaswamy case, a nine-judge bench, affirmed right to privacy as a fundamental right under the Constitution, which restated the judgement of Suchita Srivastava's case and held that women have right to privacy and all the reproductive rights should be ensured by the state. Thus, the court declared right to abortion as a fundamental right. In U.S Supreme Court gave judgement in the famous case related to abortion was Roe vs Wade which overturned the case judgement of Dobbs vs Jackson Women's Health.

Under the case roe vs wade, the Supreme Court held the ruling on abortion rights that the U.S Constitution provides a right to privacy, a fundamental right which protects people's right to have a choice between having an abortion. The Court held abortion right as not an absolute one, as it must be balanced against government's interest in protecting health and parental life. But this judgement is no longer valid.

In <sup>1</sup>Swati Agrawal & ors. vs. Union of India, a pending case before the Supreme Court, in this case the petitioners filed a PIL challenging the validity of Section 3(2), 3(4), and 5 of the Medical Treatment Pregnancy (MTP) Act as violative of Article 14 and 21 of the Indian Constitution. Section 3(2), 3(4)(a) and section 5 was challenged as violative of Article 21.

The petitioners argued that section 3(2) restricts the mother's personal liberty and privacy and fails to pass the reasonableness and proportionality tests because it is impossible to identify any potential harm to the mother's mental or physical health or any abnormalities in the developing fetus before 20 weeks of pregnancy, especially considering the lack of robust health

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<sup>1</sup> WP (C) 825/2019

infrastructure in a lot of way of the country. Section 3(4)(a) was challenged as it provides guardian rights to have control over the woman's reproductive rights. Because a pregnancy cannot be refused on the grounds that it has reached the 20-week of pregnancy, Section 5 is deemed arbitrary and disproportional under Article 21. For unmarried or single women, the explanation of Section 3(2)(b) is discriminatory because it solely discusses married women, treating equals unfairly. The petitioners further claim that because of advancements in science and technology, it is now possible to detect foetal abnormalities far later in the pregnancy and safely end the pregnancy at that point.

The draft of MTP (Amendment) Bill 2020 increases the upper limit for legal abortions to 24 weeks in special cases, has been approved by the Union Cabinet. The MTP(Amendment) 2021, increased the abortion from 20 weeks to 24 weeks for pregnant women. the act allowed unmarried women to terminate their pregnancy based on the failure of contraceptives. The woman can be granted abortion beyond 24 weeks, only after the medical board is in charge of deciding by studying the seriousness of the requirement.

### # Conclusion

Abortion is more of a constitutional concern than a moral one. Women have the unalienable right to do anything they please with their bodies, according to the constitution. Nobody has the right to tell her how to behave when it comes to reproductive issues. Her privacy and personal freedom are being violated and invaded by interfering with her reproductive choices. Despite the fact that the MTP Act has granted women freedom in circumstances relating to abortion, this freedom is nevertheless constrained and is only applicable to the aforementioned deficiencies of the Act. Abortion not being fully liberal in India, as development is required to suit the situations woman face today in the country. The unconstitutional provisions infringing the rights guaranteed by the constitution to women in the country have to be done away with.