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Abortion Laws in India: Issues of Autonomy and Legality

Abstract

Mrs. X wanted to terminate her pregnancy in the 26th week because her foetus was detected with a severe brain abnormality called Anencephaly. Abortion being illegal in India after 20 weeks of pregnancy she decided not to go through harassment in courts and get a legal exemption. She carried the baby for her full term went through a lengthy and stressful labour and gave birth to a child which died in a few minutes.

Mrs. Y in the 18th week of her pregnancy was told by her doctor that there were chances her child had a serious brain tumour. A test called the Amniotic Fluid Test was recommended but it would have taken three weeks to get the results. When she was about to cross the 20th week of her pregnancy she decided to abort the foetus and when the reports came out it was detected that the foetus had no major anomaly leaving Mrs. Y with the shock of terminating her pregnancy for no reason

These are not hypothetical situations neither these are speculations. These are stories of real women who went through these very painful experiences, which led them to file cases in the Hon. Supreme Court demanding to change the Medical Termination of Pregnancy (MTP) Act 1971.

Abortion is a topic that is completely painted black and white. In a perfect world, everyone has access to contraceptives and knows about safe sexual intercourse and there are no unwanted pregnancies either, but we do not live in a perfect world. The terms 'pro-life' and 'pro-choice' are themselves deceptive. Anti-abortion activists have given themselves the tag of 'pro-life' because they are talking about the life of the foetus. These activists fail to understand the risk these women face who are forced into an at-risk pregnancy or illegal abortion due to inaccessibility to a legal abortion. The pro-choice terminology is also quite misleading since

most women who opt for an abortion do not do so out of choice but due to various socio-cultural or medical factors.

In this paper, raising important gender, health and ethical issues are elucidated through a recent legal case in India.

KEYWORDS: Abortion, law, women, freedom, choice, India

Research Methodology

Regarding the methodological approached, the present study can be classified as a descriptive study

Aim

- To critically analyse the Laws of Abortion in India with respect to Medical Termination of Pregnancy Act, 1971.
- To study the how the laws in other countries have changed about time.
- To analyse how stringent and strict are the laws in India
- To critically study the role of the Hon. Supreme Court in formulation of Abortion Laws in the country.

Literature Review

Seema Sapru in her research paper elaborated the need of change in Abortion laws in India. Through his research he made it clear that for new policies to be implemented effectively, they need to be backed by political will and commitment in terms of adequate resource allocation, training and infrastructure support, accompanied by social inputs based on women's needs.

Edward Winchard in his research talks about sexual disorders and gender identity disorders and their relation to abortion in so far as they can be the basis of abnormalities in sexual behaviour to the extent that behaviour is regarded contrary to the law.

John Richards in his research elaborated about increasing awareness and dispelling misconceptions about the abortion law amongst providers and policymakers. There is a need to enhance awareness of both contraceptive and abortion services, especially amongst adolescents, within the larger context of sexual and reproductive health, integrating strategies and interventions within value systems and family and gender relations.

Sheila Darpan in her research described the mental and physical trauma a mother has to go through once an abortion is done she illustrates that undergoing abortion is not an easy process and it causes trauma not only to the mother but the family as well

Swati Dutt talks about the aftermath of baby which is born and is not normal or is a special child. She talks about how a special child is the centre of attention every time and is always shown pity. Further, she describes how some parents are ashamed to even let these children out of the room because it is an embarrassment for them

Sahana Sen in her research describes how the 20-week timeline does not make sense, and the reasons why it should be extended to a minimum of 26 weeks. She cites the judgements of the Hon. Supreme Court and proves her point, that sometimes it so happens that the nature of the foetus is known only after the 20-week time frame.

Vidhi Rajgaria in her paper describes certain tests, like the Amniocentesis Test(ACT) which is done only after the 20-week timeline is over. So, if the tests to check as to the health of the foetus is fine or not is known after 20 weeks, how can the law stop a woman from terminating her pregnancy.

Karls and Richard in their paper describe how abortion should be allowed as a matter of right and choice. If a woman can get a child into this world without the permission of the world, then why does she need to ask the law if she can terminate her pregnancy.

Ratan Zaveri in his paper opposed the view and said that the 20-week timeframe is just fine, for a woman to decide if she should terminate her pregnancy or not. He opposed any ammendments to the Medical Termination of Pregnancy Act and described how the act was for the protection of children and how Right to Life is involved once a woman decided to terminate her pregnancy.

Introduction

Before 1971, Abortion Laws in India were premised on the 1861 British Penal Code. To circumvent the criminality clause around abortion The Medical Termination of Pregnancy Act (MTP) was passed in 1971. Yet the law continues to render women's right to choose. Being hemmed in procedural niceties and legal formalities have hindered in permitting abortion, resulting in the death of a mother or the foetus and sometimes both. Although there are technological advancements in the medical field, the laws have remained stagnant or for a lack of better word, 'restrictive' Legal resistance to abortion-seeking after 20-week gestation adversely affects women, depriving them of autonomy of choice.¹

¹ Patel, Tulsi. (2018). Experiencing abortion rights in India through issues of autonomy and legality: A few controversies. *Global Public Health*. 13. 1-9. 10.1080/17441692.2018.1424920.

In the recent months, many states within the United States have passed laws that prohibit a woman's access to termination of pregnancy². Nine states have passed laws forbidding abortion early in the pregnancy, often without exceptions for rape and incest. Alabama, criminalised abortion from the moment of fertilisation, and Georgia's heartbeat statute, outlawing abortion at six weeks, declared the 'personhood' of an unborn child. Governor Kay Ivey of Alabama said that the bill is about challenging Roe V. Wade and protecting the lives of the unborn, because an unborn baby is a person who deserves love and protection.³

'Alabama is not the only country which has put a blanket ban on termination of pregnancy. A plenty of states in the United States have introduced "heartbeat bills". This bill basically forbids the termination of pregnancy as soon as the doctors are able to detect the first heartbeat of the foetus. These laws have not come into force yet and abortion is still legal in the United States. The reason these laws are being introduced is to provoke the Supreme Court to give a ruling or maybe overrule the Roe V. Wade judgement'

The Parliament of Ireland voted last year to abolish the procedure of abortion thereby protecting the rights of millions of women in their country? This happened after a woman was denied to exercise her right to abort her 17-week old foetus after she was diagnosed with blood cancer. The laws that governs Abortion laws in India is the Medical Termination of Pregnancy Act,1971. How different are the laws in India?

Medical Termination of Pregnancy Act, 1971

Last thirty years have seen the liberalization of abortion laws all over the globe. After 1980 the process of liberalization continued worldwide. Today only 6% of the world's population lives in countries where the law prevents abortion⁴. The majority of the countries have very restricted abortion laws, but there are 41% of women who live in countries where termination of pregnancy is available on a women's request. The Shantilal Shah Committee had recommended liberalization of abortion law in 1966 to reduce maternal morbidity and mortality associated with illegal abortion.

Considering the report of the Shantilal Shah Committee, in 1969 Medical Termination of Pregnancy bill was introduced in Rajya Sabha and was given assent by former President V.V.

² (Time. (2019). <https://time.com>. [online] Available at: <https://time.com/5591166/state-abortion-laws-explained/> [Accessed 7 Oct. 2019].

³ Nytimes.com. (2019). *Alabama Governor Signs Abortion Bill. Here's What Comes Next*. [online] Available at: <https://www.nytimes.com/2019/05/15/us/alabama-abortion-facts-law-bill.html> [Accessed 7 Oct. 2019].

⁴ Youth Ki Awaaz. (2019). *Indian Laws On Abortion & Reproductive Rights Need Reform | Youth Ki Awaaz*. [online] Available at: <https://www.youthkiawaaz.com/2018/05/following-irelands-referendum-lets-talk-about-womens-reproductive-rights-in-india/> [Accessed 5 Oct. 2019].

Giri in 1972. Certain sections of the Act were revised in 1975 to eliminate time consuming procedures for the approval of the place and to make services more readily available.

The preamble of the Medical Termination of Pregnancy Act, 1971 states “*an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto*”. Termination of Pregnancy or Abortion has been legal in India since 1971, when the Medical Termination of Pregnancy Act was passed. The law aims to reduce illegal abortion and maternal mortality and is quite radicalistic in nature.⁵ In India, Abortion is permitted only before the foetus crosses the 20- week blanket. There is a blanket ban on termination of pregnancy after 20-weeks after which permission of the courts are sought.

In 2002 and 2003, the Medical Termination of Pregnancy Act was amended to allow doctors to provide Mifepristone and Misoprostol respectively (also known as the “morning-after pill”) on prescription up until the seventh week of pregnancy.⁶

These are the following circumstances under which an abortion is permitted:

- When a woman’s life is vulnerable because of a serious disease.
- When a woman undergoes such mental and physical stress that could endanger the life of the foetus or the mother
- There could be substantial risk of physical or mental handicap of the foetus
- There are reports of inborn abnormalities on any of woman’s previous kids
- The foetus has been exposed to radiation
- The social and economic status of the woman may affect a healthy pregnancy.
- Failure of a contraceptive device
- The pregnancy is the result of Forced Sexual Intercourse.

Permission:

- A married woman’s written consent is adequate and her husband’s consent is not required.
- An unmarried woman who is over 18 years of age can also provide her own written consent.
- An unmarried woman who is under 18 years of age has to obtain a written consent from her guardian.

⁵ Sharma, N. (2019). *Why India needs a new MTP Act*. [online] <https://www.livemint.com>. Available at: <https://www.livemint.com/science/health/why-india-needs-a-new-mtp-act-1567317067262.html> [Accessed 2 Oct. 2019].

⁶ Cardiosmart.org. (2019). *Mifepristone and Misoprostol for Abortion*. [online] Available at: <https://www.cardiosmart.org/healthwise/tw12/91/tw1291> [Accessed 3 Oct. 2019].

- A mentally unstable woman must provide a written consent from her guardian.

Procedure:

Any hospital can perform a surgery to abort a foetus provided they have a valid license from the appropriate government. A doctor (He/ She) must have the following qualification to perform an abortion:

- A licensed doctor who has successfully conducted 25 abortions.
- A licensed doctor who has sufficient experience in gynaecology
- A person who has a degree in gynaecology.

Legal Status

Before 1971: The Indian Penal Code was written in accordance with the British Laws which declared Induced Abortion as illegal and it prescribed punishments for both woman and the practitioner. Basically the law provided illogical punishments for doctors, three years behind the bars with a fine or both and for women, seven years behind the bars with a fine or both. Abortions were allowed, provided that the woman's life is in grave danger. These laws were considered to be draconian as the society was progressing and was free from the clutches of the British. The idea behind this was Population Control which terribly failed, compelling the government to reconsider the law as illegal abortions were taking place and the Courts held the Government responsible for it.

In 1965, the Government of India formed a committee to look into the legal, social, cultural aspects of abortion laws in the country. The report of this committee suggested that the Laws in India are very confined and suggested a complete overhaul in these laws. Eventually it was on the suggestions of this committee that The Medical Termination of Pregnancy Act, 1971 was framed, with flexible rules and unrestricted access.

1971 and beyond: The Medical Termination of Pregnancy Act, 1971 governs the abortion laws in the country. There is blanket ban on abortion after 20 weeks. This 20-week time limit can be categorised into two parts. First, the law permits that the pregnancies which do not cross the 12-week mark could be terminated on the advice of a single doctor. Second, if the pregnancy is within 12-20 weeks, advice of at least two doctors are required to terminate the pregnancy legally. The moment 20-week period is crossed, abortion is not allowed until there are special circumstances, and the permission of the court is sought. The following are what qualifies to special circumstances:

- *“Issue of Mental Health or Physical Abnormality which would affect the foetus;*

- *When the foetus is incapacitated or deformed;*
- *Forced Sexual Intercourse;*
- *When the mother is a lunatic;*
- *When the mother is a girl who is under the age of eighteen years.”*

There is something called Medical Ultrasonography Test which helps the parent to determine the sex of the foetus before it takes birth. Sex selective abortion, commonly called female Genocide is practiced in many parts across the country as a girl child is considered as a taboo and there is a desire of a male child amongst the parents. This obviously lead to a drastic increase in the ratio of male to female population. Misuse of the Ultrasonography was surrounded by protest from different states which thereby pressurized the government to make it cognizable offence. Anyone “conducting, helping, advertising” or coercing a woman to conduct PNDT (Pre-Natal Diagnostic Test) would be punished under stringent provisions as provided by the law.

Critical Analysis of the Laws in India

“Access to abortion is legal in India but with restrictive conditions. The 20-week rule is applied in India, and a woman can terminate her pregnancy up to 20 weeks of conception. The law makes it clear that once the 20-week mark is over the permission of the court has to be sought and if any termination of pregnancy takes place otherwise, it is deemed illegal.”

“The law states that any pregnancy under 12 weeks can be terminated solely on the advice of one doctor but the moment it crosses the 12 week marks, opinion of two doctors have to be taken into consideration. The point which has to be emphasized here is that a woman cannot decide by herself that she wants to terminate her pregnancy, the consent of the doctors has to be sought no matter at which week the abortion takes place. The law provides four circumstances for the same which are as follows:”

1. *“If continuation of the pregnancy poses any risks to the life of the mother or to her physical or mental health;”⁷*
2. *If the foetus has any severe abnormalities;*
3. *If pregnancy occurred as a result of failure of contraception (but this is only applicable to married women);*
4. *If pregnancy is a result of sexual assault or rape”.*

⁷ Is abortion in india illegal?, QUORA, <https://www.quora.com/Is-abortion-in-india-illegal> (last visited May 19, 2020).

“The slow turning wheels of justice is the root of troubles for the women in India, who are being misled and manipulated by the Courts and the Government. A pregnant woman neither has to be accompanied by the father nor she has to be accompanied by any family member. The MTP Act given an adult woman the autonomy to decide for themselves which women in this country are unaware about. The consent of the mother is of utmost importance the doctor does not require the consent of any other family member. The women in rural area still think that Abortion is illegal due to the disinterested media and a lack of proper communication structure. Female Mortality rate has seen a splurge in India solely because of this. Poor communications is also why uneducated women across the country buying “over the counter” abortion pills which is strictly prohibited unless prescribed by a doctor. Undoubtedly it has also contributed to illegal abortions which takes place in unhealthy and unsanitary conditions.”

Since India is progressing on both technological and healthcare sectors, the Government of India should increase the blanket ban on abortion from 20 weeks to 24 weeks. The doctors and medical experts all across the world have iterated this point a plenty of times that there would be no danger to the foetus.

On 18th September, 2019, the Central Government in a reply to a petition which challenged the Constitutional Validity of Section 3(2)(b) of the MTP Act made it clear to the Supreme Court that ceiling of 20 weeks for abortion cannot be extended and that the state was morally and duty bound as the guardian of its citizens and has the power to safeguard the life of a foetus in the womb once it attains the stage of viability.

The culture in India has changed drastically. Abortion is not a taboo anymore, women are divorcees without a sense of social stigma, there are single mothers and many women have live-in relationships. It about time that the laws in India are amended without delay in any procedural formality.

Right to Abortion- A Reality?

According to a project conducted by Worldometers, India has witnessed 36.4 million childbirths since the beginning of this year and about 10.8 million induced abortions⁸. “When a child is born it usually gets support, affection, love and celebration. Abortions usually gets judgement, stigma, stress and punishment. The law provides restrictions which totally constrain and deny women reproductive justice. Some of these restrictions being the 20-week gestation limit and the need for physician’s consent.”

⁸ Worldometers.info. (2019). *India Population (2019) - Worldometers*. [online] Available at: <https://www.worldometers.info/world-population/india-population/> [Accessed 7 Oct. 2019].

“The Bombay High Court received a petition which requested permission to terminate a 25-week old pregnancy due to the reports of ultrasound which showed that the foetus had an abnormal heart condition. This was the Niketa Mehta case, which opened the eyes of the leaders and the courts all across the nation. She was denied a premature birth and in the long run endured an unsuccessful labour. It has been a long time since she was denied conceptive equity. The 49-year-old foetus removal law which was last corrected 15 years back to address the difficulties which ruin the entrance to premature birth administrations.”

“The Medical Termination of Pregnancy (MTP) Act, 1971 which is liberal in its provisions, legalizes abortion. However, it is not without limitations, and the need to amend it cannot be emphasised enough. The horrific case of the 10-year-old rape victim being denied permission to abort a 32-week-old foetus shook the nation in 2017 and reignited the conversation about the need to address the gaps of the abortion law. This case compelled the Government of India and the Supreme Court to take note of the challenges women face in this country on a routine basis.”

“Development on this front stays moderate and unmotivated. As boundaries to get to keep on existing, ladies are constrained to look for fetus removal administrations from inadequate professionals, illicit suppliers or 'quacks', which may regularly bring about clinical complexities and antagonistic wellbeing suggestions. The battles of ladies (and frequently the suppliers of these administrations) don't end here. From the absence of offices, to the inadequate framework and the social shame, cover and conflation of different laws with the MTP Act just add to the difficulties.”

“The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, and the Protection of Children from Sexual Offences (POCSO) Act, 2012, aim to address, curb and eliminate the practice of sex selection and the increasing incidence of child sexual abuse in the country, respectively.”

Under the POCSO Act, *“the providers are under a duty to report any case of under 18-pregnancy to the police. This provision contradicts the confidentiality clause of the MTP Act. Besides the extreme effect of criminalising all sex under the age of 18, it compromises the identity of the girl who wants an abortion and increases the risk of the girl not approaching anyone to avoid reports in the media.”*

“Although these regulations are well-intentioned and essential to tackle and counter societal problems, they also impede access to health care, safe abortion facilities, make clinics reluctant, and impinge on a woman's right to privacy. For one reason, campaigners will be vigilant to

operate in silos and prevent collateral harm on other, similarly significant problems. It is time for us as a society to recognize 21st century reality that women will have the right to make choices about their sexual and reproductive health. Indeed, in August 2017, India's Supreme Court enhanced the right to choose and put abortion under the fundamental right to privacy.”

“The Government has proposed certain amendments to the MTP Act that provide an opportunity for women to exercise their rights. This provision calls for the cessation of abortion after 12 weeks upon request. It further eradicates the challenges encountered by most women by increasing the maximum gestation limit from 20 to 24 weeks for disadvantaged groups such as single mothers and rape victims, eliminating the gestation limit entirely when the foetus is diagnosed with significant anomalies, and the amount of specialist opinions needed in the second trimester from two to one. The amendment further recommends expanding the physician base for early surgical abortion to involve mid-level non-specialist services – a move that is desperately required to resolve services' dearth in underserved regions. Such amendments to the law would not only improve access to abortion services but also reduce the burden on maternal mortality of unsafe abortions and enable the government to demonstrate its commitment to empowering women.”

“Many people believe that abortion is about how the child was pregnant or how contraceptives were used. An abortion is in no way linked to the history of an individual, or her moral or cultural convictions. In the generation of today, the mind set should be that having an abortion is entirely about being a woman who has decided to exercise her right.”

The Niketa Mehta Case

“We have all witnessed on television Niketa Mehta and her husband Haresh Mehta, performing rounds of the hospital and the Mumbai High Court. She had made a plea in the Mumbai High Court, which was rejected later, to accept the courts permission to terminate her 24-week-old foetus. The explanation for the lawsuit was that her unborn child had a congenital heart blockage and a misplacement of the artery. The MTP Act introduced a complete ban beyond 20 weeks on termination of pregnancy. Yet how fair it is to introduce an infant into this universe who only does not require air, water and food, but a pacemaker to live from the moment he / she joins this planet.”

“Inadvertently the Bombay High Court denied Mehta 's appeal but what the Hon. Court refused to picture is the image of a child opening his eyes in anticipation, raising his small hands and feet preparing for the world to see. Instead of being turned off to his parents' warm hands, the child is put in a frozen surgery theatre where his frail body is ripped apart by brutal surgical

tools only to implant a pacemaker. Isn't it heart breaking for parents, mothers, associated family members to bring a child on the Life Support System into this world? This is nothing more than a good example of a cold blooded assassination.”

“When God created this universe, he gave the women the power to give birth, to carry new lives into this universe. The core of a mother is loaded with a wealth of love, caring and devotion to take charge of the fresh life. So much so that if a relationship of selfless affection occurs in the universe, it is between a mother and its child. The moment a mother conceives an infant she begins to feel for her infant in her womb, she caresses it, embraces it, feeds it and nurtures it. So how does the Hon. Court believe that for personal motives a woman who decides to kill her first child does so and suspects her of becoming a murderer. Why was a woman named by the court '*self-centred*' and '*cruel*'? Just because she wanted to end her pregnancy because her child would have to survive his whole life on a pacemaker, is that what is called being selfish? I think that it is looking at the larger picture and making the best choice at the right moment.”

“A pacemaker 's life is 5 years, and its price is a colossal 1lac. Parents of the unborn child, Niketa Mehta and Haresh Mehta belonged to the middle class strata of the society. To carry a pacemaker's burden and on top of that high medication costs should have left them powerless in searching for funds and services to have their child survive during their lives.”

“If we consider that some institution of charity would assume responsibility for the child and promise to bear all of its medical expenses. Thanks to our 24-hour news channels and endless debates, the unborn child was already famous in the world but the family had to face the emotional and mental trauma. Each parent wishes the fate of their child in golden letters, rewarding them with all the joy and prosperity in their lives. Why would parents be bringing a child into this world when they know that their future is doomed?”

“We have stories of individuals like Stephen Hawkins who did make it big given their physical handicaps so isn't the situation different from a developed world like India in foreign countries? In India, services, incentives, and technologies vary from those accessible in foreign countries. The government insure children with disabilities get the best kind of healthcare. Do the Indian lawmakers take responsibility for such kids? The irresponsible media in India will report the birth of the boy, which the entire world will observe, panic for a moment, and then everybody will forget. No one will come while the infant is in unbearable agony and is having rough medical treatment. Her parents would be the only people watching him. So, if the couple doesn't want to deal with such a situation and save their child from a cursed future by ending the

pregnancy, then why does the law prohibit it? This is clearly a case of destroying kindness and we think parents should really be able to determine what they want to do for their infant.” The court did not help the couple, and 10 days after the Bombay High Court verdict, Niketa Mehta suffered a miscarriage which left the infant dead and the mother weak.⁹

“If the law cannot be amended, why not make an exception for humanitarian reasons. It's about time that the Indian government allowed an adjustment to the Medical Termination Abortion Act, 1971. After all, how many Niketa's do we have to see heading to trial every day over such a case? Is it not cynical to see pregnant women rushing about when she would be able to rule herself, relying on a Trial, an anonymous judge to make a decision? The court not only behaved vindictively by denying her appeal, but also prevented all those people who behave professionally and follow the legislation to render exceptions rather than surreptitiously performing the actions.”

Critical Analysis on the role of Supreme Court in formulating Policy Decision

The Supreme Court has passed numerous decisions regarding abortion freedom in the last few years.

“The laws of abortion in India are governed by the Medical Termination of Pregnancy Act, 1971. The MTP Act specifies that a pregnancy must be discontinued by a licensed medical professional before the 20th week of pregnancy, after evidence that the duration of the pregnancy is either a danger to the safety of the mother or significantly detrimental to her physical or mental wellbeing or whether there is a substantial likelihood that the infant will have severe physical or mental problems when born. Pregnancy caused by rape or by contraceptive failure would constitute a serious injury to mental health. Abortion is allowed beyond 20 weeks if it is necessary to save the life of a woman in accordance with Section 5. In all cases of abortion after 20 weeks before the Court, the Court shall constitute a Medical Board, an expert committee of medical professionals which shall produce a Report. The Report discusses that, first, pregnancy persistence will trigger significant physical or emotional harm to the mother and, second, if the birth infant will suffer from any intellectual or physical disorders.”

“In *Mrs. X vs. Union of India* (2017 SCC OnLine SC 124)¹⁰, the Supreme Court allowed for the termination of a 22-week old pregnancy. This was done after a 7 member Medical Board

⁹ The Times of India. (2019). *Mumbai abortion case: Niketa Mehta suffers miscarriage* | *Mumbai News - Times of India*. [online] Available at: <https://timesofindia.indiatimes.com/city/mumbai/Mumbai-abortion-case-Niketa-Mehta-suffers-miscarriage/articleshow/3363293.cms> [Accessed 7 Oct. 2019].

¹⁰ AIR (2019). *Mrs. X And Ors vs Union Of India And Ors on 7 February, 2017*. [online] Indiankanoon.org. Available at: <https://indiankanoon.org/doc/73782861/> [Accessed 2 Oct. 2019].

opined that allowing the pregnancy to continue could gravely endanger the woman's physical and mental health. The Court held that "a woman's right to make reproductive choices is also a dimension of her 'personal liberty' under Article 21 of the Constitution" and that the right to bodily integrity allows her to terminate her pregnancy. Similar judgments were passed by the Supreme Court in other cases where pregnancies were beyond 20 weeks and the fetuses had various medical conditions and anomalies, resulting in a high risk to the fetus and the mother (*Tapasya Umesh Pisal vs. Union of India* ((2018) 12 SCC 57) [24 weeks]¹¹; *Meera Santosh Pal vs. Union of India* (2017 SCC OnLine SC 39) [23 weeks]¹²; *Mamta Verma vs. Union of India* (2017 (6) MLJ 420, 2017 (8) Scale 601, 2017 (4) RCR (Cri) 697)¹³ [25 weeks]). In all these cases the Supreme Court referred the matters to a Medical Board and gave its decision based on the opinion of the Medical Board."

"In *Murugan Nayakkar vs. Union of India & Ors.* (W.P. (C) No. 749/2017)¹⁴, the Apex Court allowed the termination of 32-week old pregnancy of a 13-year-old rape victim holding, Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed."

"However, in *Savita Sachin Patil vs. Union of India* ([W.P. No.174 of 2017])¹⁵ the Court rejected termination of a 27-week pregnancy. The Medical Board gave a finding that there was no physical risk to the mother but the foetus had severe physical anomalies. The Court then did not permit termination on the ground based on the Medical Board Report."

"In *Alakh Alok Srivastava vs. Union of India* (W.P. (C) No. 565/2017)¹⁶, where the petitioner was a 10-year-old pregnant rape victim with a 32-week pregnancy as well the Court did not allow termination. The Medical Board opined that the continuation of the pregnancy was less

¹¹ Indiankanoon.org. (2019). *Tapasya Umesh Pisal vs Union Of India on 10 August, 2017*. [online] Available at: <https://indiankanoon.org/doc/72530975/> [Accessed 3 Oct. 2019].

¹² AIR (2019). *Meera Santosh Pal And Ors vs Union Of India And Ors on 16 January, 2017*. [online] Indiankanoon.org. Available at: <https://indiankanoon.org/doc/168661224/> [Accessed 7 Oct. 2019].

¹³ AIR (2019). *Mamta Verma vs Union Of India on 9 August, 2017*. [online] Indiankanoon.org. Available at: <https://indiankanoon.org/doc/161612603/> [Accessed 7 Oct. 2019].

¹⁴ AIR (2019). *Murugan Nayakkar vs Union Of India on 6 September, 2017*. [online] Indiankanoon.org. Available at: <https://indiankanoon.org/doc/11026511/> [Accessed 7 Oct. 2019].

¹⁵ AIR (2019). *Savita Sachin Patil & Another v Union of India & Others on 28 February 2017 - Judgement - LawyerServices*. [online] Lawyerservices.in. Available at: <https://www.lawyerservices.in/Savita-Sachin-Patil-and-Another-Versus-Union-of-India-and-Others-2017-02-28> [Accessed 1 Oct. 2019].

¹⁶ AIR (2019). *Alakh Alok Srivastava vs Union Of India on 1 May, 2018*. [online] Indiankanoon.org. Available at: <https://indiankanoon.org/doc/140831979/> [Accessed 7 Oct. 2019].

hazardous for the petitioner than termination at that stage. During the course of the proceedings, the Court asked the Centre to direct setting up of permanent medical boards in states to expeditiously examine requests for termination post 20 weeks of pregnancy and the Centre issued instructions for the same.”

Conclusion

“It is argued that women can make a decision on abortion wholly provided they are healthy and have a majority. When a woman's future will be impacted by an abortion, her rights could be curtailed. Any further limitations on reproductive access are uninvited and unwelcomed. It is valid that the choice of a mother to terminate her pregnancy relies on the possible danger to the child's safety or emotional and physical wellbeing. Besides these reasons, various important factors also exist as to why a woman chooses to terminate her pregnancy. The family might not be financially stable to accept an extra in the household. Her pregnancy could come at a period when she wants to adjust her job which needs free time, hard work and commitment. The bond between husband and wife is on the verge of failure and the prospect of marriage is unclear. These factors are all really significant and appropriate, but there is no connection to the Medical Termination of Pregnancy Act 1971. Such Statute can also be found unjust and unequal and contradicts the standards of equal justice set out in Section 14 of the Constitution if read carefully. It is worth mentioning that the MTP Act does not protect the unborn child, and any ambiguous protection it receives under that Act is only a by-product of pregnant women 's protection. The protections and limitations enforced by this Law make it plain that the State's primary aim is to shield a live individual from the hazards that might occur during the pregnancy termination cycle.”

“It is the mother's natural duty to provide her infant with the best she can. Such cases may be when a pregnant woman is involved in behaviours that can damage the child because of negligence, carelessness or acts committed by the mother herself. Abortion is a delicate matter and should only be left to the mother's decision. It is also helpful and beneficial to the mother sometimes, when the state or any other voluntary or charity organization willing to look after the baby. The rights of a mother are limited only until the termination of pregnancy. It is also claimed that raising 20 million babies annually will have a larger effect on the nation's social care and economic capital than, estimate, one or five million abortions a year. The law must take care of the liberty of the mother as well as of the unborn. As a hospitable and courteous culture, it is our responsibility to explore ways to help distressed and scared mothers and distressed and neglected children. The law is the law, and it cannot be changed but there is always a scope for an amendment. A draft of The Medical Termination of Pregnancy

(Amendment) Bill, 2020 has been cleared from the Lok Sabha and is awaiting its approval from the Rajya Sabha.”

It is needless to mention that a new abortion law, is the “need of the hour”

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