

ABORTION AS POPULATION CONTROL METHODS IS A VIOLATION OF REPRODUCTIVE RIGHT: A CRITICAL STUDY

Pyali Chatterjee

*Assistant Professor, ISBM University, Nawapara (Kosmi),
Block & Tehsil- Chhura, District- Gariyaband, Chhattisgarh, India
Phd scholar under the guidance of Dr. Komal Vig, Amity University, Noida*

Abstract: Abortion and population control both these are two different topics. But they are interlinked with each other. Abortion right movement which was started by Margaret Sanger once for the protection of women right in USA, succeeded to introduce abortion right as one of the basic right of the women without any discrimination, which is protected by US Constitution also under Right to privacy. On the other hand in India it was introduced as a Family Planning Methods. As it was introduced in family planning method, from here it was clear that the Abortion Right was restricted to married women only. In 21st Century still Indian women were lacking behind regarding their basic human right. Abortion is a right given to the women to terminate her unwanted pregnancy and it has been recognized as a basic human right in many International Conventions too. This is also true that increasing population has become one of the major concerns of for underdeveloped and developed country too. To control birth rate is one of the main targets of every country. As per Indian Law i.e. Medical Termination of Act, 1971 abortion right is given only to married women in case of only contraceptive failure for the purpose of population control. The Right which is considered to be as one of the essential right of the women in International Level, Indian Government failed to understand or provide this basic right to the woman. Through this research paper, researcher will discuss how Indian Law violates the basic Right of the women i.e. Abortion Right.

Keywords: Abortion, MTP, Reproductive Rights, Right to Privacy, Termination.

Introduction: Under MTP Act termination of pregnancy is allowed when pregnancy is caused due to rape and failure of contraceptives. Now question which arise here is that whether only married women used contraceptives? In modern world where everybody has a right to choose his/her life partner, right to sex, lives together then in such cases how we can say that use of contraceptives is limited for married woman only. When every woman has a right to sex then every women must have a right to abortion in case of contraceptives failure. Also, whether it is justified in the eye of law to punish such woman if they seek illegal abortion for terminating the unwanted fetus?

The object of the MTP Act is to save the life of the pregnant woman or to relieve her from any injury to her physical and mental health, and in no other thing. It would appear that the Act is rather in consonance with Article 21 of the constitution of India than in conflict with it.

Also as per section 3 of the MTP Act, termination of pregnancy by registered medical practitioner is allowed when the continuation of pregnancy would involve a risk to the life of the pregnant woman or cause grave injury to her physical and mental health; or that if the child were born, it would suffer from such physical or mental abnormalities as would render it seriously handicapped. And as per the explanation given in Section 3, when pregnancy is caused due to rape, the anguish of pregnancy is regarded as grave injury to the mental health of the pregnant woman. If the pregnancy occurs as a result of failure of any device or methods used by the woman or her husband for the purpose of limiting the number of limiting the number of children, the anguish caused by such unwanted pregnancy is also treated as constituting grave injury to the mental health of the pregnant woman.

As per section 3 of MTP Act, unwanted pregnancy means here pregnancy caused due to rape and failure of contraceptives by married woman or by her husband. But current MTP Act fails to consider the abortion rights of women in other situation of unwanted pregnancy like in cases of unmarried lady etc.

The MTP Act, 1971 of India was largely modelled on the UK Abortion Act of 1967. In US abortion is allowed on demand and is available to all women without any discrimination but that too after long battle fought by the women of US. As per Article 21 of Indian Constitution, women's right to make reproductive choices comes under the dimension of personal liberty. Also it is to be noted that reproductive choices can be exercised to procreate as well as to abstain from procreating. And this right should be given to all women without any discrimination. Women right to privacy, dignity and bodily integrity should be respected by the law without making any discrimination.

This means that there should not be any restriction whatsoever on the exercise of reproductive choices for woman's right. But in actual practice it is not so. Section 3 of the MTP Act is a clear violation of woman reproductive right.

The most interesting part of law is that before 1971 abortion was illegal and punishable offence under Indian Penal Code except when it is done for saving the life of the mother and in cases of rape victims. After the introduction of the MTP Act the situation is more or less the same. Only difference is that a married woman will be allowed to terminate her pregnancy in case of failure of contraceptives. Even the object of the MTP Act is to save the life of the pregnant women or relieve her of any injury to her physical and mental health, and no other thing, it would appear the Act is rather in consonance with Article 21 of the Constitution of India than in conflict with it. But before this Act also maternal mortality rate was high due to illegal abortion and the situation remain same at present also. In one of the case between **Surendra Chauhan versus State of M.P 2000 Cr LJ 1789(MP)**, the accused had illicit relations with the deceased and when she became pregnant he took her to a clinic of a doctor with intent to cause her abortion. The woman died during the process as the doctor was not competent to terminate pregnancy nor was his clinic approved by the Government under Section 4 of the Medical Termination of Pregnancy Act, 1971. The accused and the doctor were held liable under Section 314/34 of IPC.

This case is clear example that why woman were forced to choose illegal abortion even after having the MTP Act. The only answer for this question is that the present law is conditional law, which one can avail only after fulfilling the conditions. And for the fluffing this conditions the woman should fall under the following category:

1. Rape victim
2. Married
3. Minor

Rest other woman were not included in the Act like unmarried, widow, divorcee.

Till now, law relating to abortion is not liberal in India as compare to US, where abortion is allowed on demand. The MTP Act in 21st century still failed to provide justice too many women who were forced to die due to illegal abortion.

Abortion as Population Control Mechanism: In Chapter 22.78 of 6th Family Planning Report, it is mentioned that "The Medical Termination of Pregnancy Act, which is in force now, is in the nature of health measure and family planning is not one of its objectives. However, MTP can be resorted to as a corrective method for failure of contraceptives. The existence of this Act and the benefits that can be derived are still not fully known. This needs widest publicity." This clearly shows that one of the intentions behind the Indian Government to introduced MTP Act in India was to control the growing population. As population control was the main target for the newly formed Indian Government. Many instances where there in past like mass sterilization that proves that Population control was one of the challenges for the Government and because of this Shantilal Shah Committee were formed in 1964 to about the abortion law.

Jurisprudence Aspect of MTP Act: According to the legal philosophy of Jeremy Bentham the function of law is to emancipate the individual from the bondage and restraint upon his freedom. Once made free, the individual will himself look after his freedom. According to him “the end of the legislation is the greatest happiness of the greatest number”. The purpose of the law and thereby the task of the government is to bring pleasure which is the consequence of good and to avoid pain, which is the consequence of evil. Pleasure and pain are therefore the ultimate standards on which a law should be judged. According to Bentham, Security and equality form the main objective of legal regulation.

But when we speak about MTP Act, then we find that this law is not at all good. As the purpose for which it was enacted that is to reduce the maternal mortality rate has not been achieved yet. Rather in entire South East Asia the highest mortality rate has been recorded in India.

Also according to Kelson, a theory of law must be free from ethics, politics, sociology, history. In other words the law must be “Pure”. According to him every country has its own grundnorm from which the other norm is being originated. A grundnorm is the constitution of a country from where other laws originates. And all this laws should be according to constitution. But Article 14 of the constitution speaks about equality before and equal protection before law. But MTP Act fails to provide abortion rights to all women without any marital bias. Now how we can say that MTP Act is a good law as per the jurisprudential aspect.

Even the politics behind introducing the MTP Act was to use it as a population control mechanism that is why only married woman was allowed to terminate her pregnancy if the pregnancy occurs due to failure of contraceptives for the purpose of limiting the number of children as unwanted pregnancy may constitute a grave injury to the mental health of the pregnant woman due to the anguish of such unwanted pregnancy.

The MTP Act is not concerned about the health of the woman at all. If it so then abortion would be allowed on demand. Also the Act fails to consider the anguish of unwanted pregnancy of the unmarried woman, divorcee, widow which also may constitute grave injury to the mental health of this women. Due to this only, women were forced to choose illegal way for abortion by risking their life. And if they caught sometime by the law enforcement body then they will be punished according to the penal law of India. So, in all conditions the women life in India is miserable. And it's also seems that there is a violation of Right to abortion protected under right to privacy by Article 21 of Constitution of India.

Suggestions and Conclusion: The following are the suggestions:

1. There is an urgent need of changes in MTP Act.
2. Abortion should be allowed on demand.
3. It should not be used as a Population control rather it should be provided as right for all women.
4. Section 3 of the Act should be amended and all women should be allowed to go for abortion.
5. Above all woman right to privacy which also includes abortion right should be protected and any law violating this right should be declared void.

There is a saying that Self Help is the best help. So women have to fight for their right. As it is the right of every woman, so woman should initiate this fight for themselves first. Then only there right for abortion under Article 21 will be allowed on demand and that also without any bias.

References:

1. <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html>
2. Garima Tiwari, *Jurisprudence-I*, 75, Lexis Nexis (1st edn, 2013, Haryana)
3. The Medical Termination of pregnancy Act, 1971, Universal Law Publishing, New Delhi-India, 2017
4. Anubha Rastogi, *Claiming Dignity: Reproductive Rights and The Law*, HRLN, New Delhi, 2009
5. Edited by Nivedita Menon, *Themes in Politics Gender and Politics in India*, Oxford University Press, New Delhi, 1999
