

## **THE SOMATIC REPRODUCTION RIGHTS OF AN INDIAN FEMALE: A RIGHT, A CHOICE, OR BOTH?**

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### **ABSTRACT**

The trigger to write this article came directly from looking at the number of abortions that took place outside the healthcare facilities in India. Ever since the Indian Independence, the country has seen fast growth in all spheres leaving out the health care for women at stake. Especially the pregnant women and women who want to abort their pregnancies have been experiencing acute deformities while accessing medical help in common. Now, proceeding on to the rural women's health in India, a large portion of them has been identified to have terminated their pregnancies in an unethical manner, which is dangerous to their life. After analyzing the major health issues in India, it is found that the problems relating to the unethical abortion of pregnancy have been on higher rates.

Hence, this article opens new vistas for the discussion of women's rights over her body and the timeline of the Women's abortion rights in India. The article makes a vast clarity between the somatic rights of the Indian women in comparison with that of the International law. Furthermore, the article walks through the methods and procedures for the termination of pregnancies along with its legality. The understanding of the right over the body, the right to terminate the pregnancy, and the right to life give a large scope for study in this article. This article mainly aims at enlightening the reader about the ambit of women's rights over her body

post-2020. To provide more importance in this regard the disadvantages faced by an Indian woman due to the unwanted pregnancy are provided for the reader's quick grasp.

**Keywords:** Abortion, procedure, International laws, Indian By-laws, right to life, abortion rights, post-2020

## INTRODUCTION

**Abortion** is defined as the spontaneous or artificial induced expulsion of the foetus<sup>i</sup>. Abortion is a procedure to end a pregnancy. It uses medicine or surgery to remove the embryo or foetus and placenta from the uterus. Abortion is when a pregnancy is ended so that it doesn't result in the birth of a child. Sometimes it is called 'termination of pregnancy'<sup>ii</sup>. The termination of a pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or foetus<sup>iii</sup>.

Abortion is the removal of pregnancy tissue, products of conception, or the foetus and placenta (afterbirth) from the uterus. In general, the terms foetus and placenta are used after eight weeks of pregnancy. Pregnancy tissue and products of conception refer to tissue produced by the union of an egg and sperm before eight weeks.<sup>iv</sup>The procedure should be done by a licensed health care professional.<sup>v</sup>The choice to abort is very personal.

Tran humanists and like-minded bioethicists recognize that **somatic rights** are individual rights. That means that, unless they harm someone else directly, you should be able to do as you please.<sup>vi</sup> The somatic reproductive rights mean the right to choose whether or not to reproduce. A major portion of the woman is deprived of this right due to social pressures, but the law cannot deprive them of these important rights.

The right to the termination of pregnancy of a woman is one of the main somatic reproductive rights in the world.

## HISTORY

### *History of termination of pregnancy in India:*

The termination of pregnancy has been illegal in India for a long period of time. The abortion has become legal only after the arrival of the Medical Termination of Pregnancy Act, 1971 arrived. Before the act evolved, abortion was considered to be illegal and punished under certain provisions of the Indian Penal Code. It was said that causing miscarriage intentionally. Women have to abort illegally before the act was passed, which is very dangerous for their life and the unhealthy means of practice. The termination of pregnancy is allowed only when the mother's life is in danger. The Indian government organized a committee called Shah which reviewed all the socio-legal culture and the medical aspects of the abortion and made a recommendation for legalizing the termination of pregnancy in 1966. In 1970, the bill was passed regarding the legalization of abortion and the act was finally passed in 1971.

The act was made after realizing various circumstances that could affect a family when a woman is pregnant. The Medical Termination of Pregnancy Act allows the pregnant woman to undergo an abortion under certain circumstances. The length of the pregnancy must not exceed 12 weeks or may exceed 12 weeks but not more than 20 weeks as of the opinion of two medical practitioners. The termination should be done in good faith. When the continuation of pregnancy seems to affect maternal life either physically or mentally and if the child is found to born with certain serious abnormalities then the termination of pregnancy is permitted<sup>vii</sup>.

### *History of termination of pregnancy in the International law:*

Internationally, the liberalization of the termination of pregnancy has started in 1920 following the victory of the birth control movement. In 1921, the Infant Life Protection Act was passed in the UK. That act leads make amendments in the offenses against the person act, 1861. In America, the termination of pregnancy movement was started in 1960. The termination of pregnancy is legalized after many movements internationally. In many countries, the termination of pregnancy is done after a request is made from the maternal side. In India, abortion takes place legally considering maternal health and the infant's health.

## METHODS AND PROCEDURES

*The following are the methods and procedures used to terminate the pregnancy:*

Different methods have been practiced from ancient history to the present day. The termination of the pregnancy ends the life of the infant which is a developing child. The termination of pregnancy should be done only by the medical practitioners registered under the act. The abortion is done by taking pills, using sharp implements, pressuring the abdomen, and various other techniques.

In ancient times, abortion is done by taking natural abortifacients. The withdrawal of infants by artificial contraception and abstinence has been followed traditionally. The termination of pregnancy has been done with various methods during different trimesters.

*The following are the legal and approved methods for the termination of pregnancy<sup>viii</sup>:*

The different methods include drugs, pills, vacuum aspiration, dilation & evacuation, and induction<sup>ix</sup>. The termination of pregnancy should be done in a good faith after being authorized by the medical practitioner.

### **Pills**

In the beginning stage, in the 7 weeks, abortion is safer and easier to perform. The pills are used to kill the embryo. This will take the process and the abortion is done in 5 hours. This method is cost efficiency also.

### **Drugs**

This is also used in the early stage of abortion in rare cases. The drugs preferred for cancer are used which is used to prevent the process of the multiplication of cells and stop the growth of the embryo. The process will take nearly 2 days. This procedure is costly.

### **Vacuum aspiration**

This method is used in the second trimester of pregnancy in the 12 weeks. This method is done by sucking out the foetus from the uterus by the pressure. This is the most common method used for termination.

### **In the dilation and evacuation method,**

The pregnancy is done in 14 weeks where the removal of pregnancy tissue from the cervix is done along with the vacuum technique. The instruments are used to remove the tissue from the uterus.

Sometimes, artificial labour is created for the termination of pregnancy. This method is said to be induced by abortion.

## **BIRTH CONTROL**

The pregnancy can be prevented before it even gets started by the methods of birth control. This method prevents pregnancy and it is being followed in every country. The temporary means of the birth control process is using condoms, taking pills, etc. The permanent means of birth control process are vasectomy and tubectomy. It is also said to be family planning schemes in our country. These are some legal methods for the prevention of pregnancy. The termination of pregnancy should be done according to the ways said in the act.

In the United States, abortion is used most often to end an unplanned pregnancy. Unplanned pregnancies happen when birth control is not used, is used incorrectly, or fails to prevent pregnancy. <sup>x</sup>

There are certain cases in which abortion has been permitted by the court of law. In 1973 the landmark judgment has been given by the US Supreme Court in the case of '*Roe V. Wade*'<sup>xi</sup>. It was said that the woman has the right to privacy to decide with her abortion.

The reproductive right of women is her fundamental right. The person's rights like right over their body and their mental health are their privacy rights and should be considered as a fundamental right that was made clear in the case of *Justice K.S. Puttaswamy V. Union of India*<sup>xii</sup>. The abortion is a human right and one can be free to undergo abortion as a part of their personal liberty.

## **SIGNIFICANT LAWS GOVERNING THE TERMINATION OF PREGNANCY**

### ***Indian Laws:***

#### **MEDICAL TERMINATION OF PREGNANCY AMENDMENT BILL – 2020<sup>xiii</sup>**

This Bill was introduced by Dr. Harsha Vardhan, the minister of Health and Family welfare on March 17, 2020, for making certain amendments in the Medical Termination of Pregnancy Act, 1978.

The changes made in the acts are as follows,

The bill added a definition to the termination of pregnancy as it is a procedure undertaken to terminate the pregnancy with medical or surgical methods.

In the act, it was said that the termination of pregnancy can be done within in the 12 weeks of pregnancy with the opinion of a medical practitioner and in case of any problems or risk in the pregnancy or any abnormalities to be found in the child then the termination can be done within 20 weeks with the opinion of two medical practitioners and the bill amends the acts as, that the termination of pregnancy can be done within 20 weeks with the estimation of a medical practitioner and in case of abnormalities and risks, the termination can be done within 20 to 24 weeks, in the assessment of two medical practitioners. The termination in 24 weeks can only be done to woman in certain conditions specified by the central government.

In the act, it was said that if the woman became pregnant because of the errors caused in the barrier methods used by “married woman or her husband” which cause mental trauma to that pregnant woman, in this provision “married woman or her husband” is replaced with “woman or her partner”.

The bill talks about the constitution of the medical board, the powers, and functions of the board will be notified by the central government. That the medical board shall consist of the gynaecologists, radiologists, and paediatricians as members. They shall constitute the abnormalities of the baby. The amendment also constituted the protection of the privacy of the women. It states that the details of the woman who terminated her pregnancy shall not be

revealed except for the person authorized by law. In case of violating the terms, they shall be liable for imprisonment for 1 year or liable to fine.

***International Laws:***

**Conventions:**

**UNESCO:**

The UNESCO (United Nations Education Scientific and Cultural Organisation) has enriched the report that supports abortion without the consent of the parents. The sexual rights of the adolescents were implied on the International Youth Day. The health rights cannot be separated from the privacy rights<sup>xiv</sup>.

It was said by UNESCO, that unsafe abortion should be prevented, the safe abortion measures are to be made available for all women and adolescent girls. It should be legal and cost-efficient. In the entire process, the privacy of the adolescents is completely involved and it should be protected<sup>xv</sup>.

**WHO:**

Many publications have been made by (WHO) World Health Organisation regarding the safe pregnancy termination procedures. It also gives detailed explanations regarding the pregnancy in the adolescent times<sup>xvi</sup>.

A study<sup>xvii</sup> reveals that during the last 4 years 2015 – 2019 the unwanted pregnancy rate has declined and the abortion due to the unwanted pregnancy has been increased. In high-income countries the sexual and reproductive health of women is taken care of they get access to the proper medical techniques in the termination of the pregnancy.

The treaties regarding human health and rights are silent about the right to abortion.

## THE SOMATIC REPRODUCTIVE RIGHT OF A WOMAN

### *In India:*

In the case of *Suchita Shrivastava V. Chandigarh Administration*, the pregnant woman was 'mentally ill'. The pregnancy was the result of the alleged rape caused to her in the institution she was in. She wanted to keep the baby but the defense argued that the pregnancy was against her will and it will be contrary to keep the child. She was 20 weeks pregnant and it will be a danger for her life to undergo an abortion. Her reproductive right was respected and the court held that she should be taken care throughout her pregnancy and her post-delivery<sup>xviii</sup>.

Every woman has her right over her body i.e. the right to terminate her pregnancy. Article 21 of the constitution gives the personal liberty to the woman to have her privacy and reproductive rights.

In *Dr. Nikil Datar V. Union of India*<sup>xix</sup> case, the 24 weeks old infant in the womb of a lady was diagnosed with congenital heart problems and a case was filed before the court for the termination of pregnancy. The court held that it was against the terms of the provisions of the Medical Termination of Pregnancy Act and made a woman undergo various tests under the review of medical technicians and held that there is a chance for the baby to be healthy and the termination cannot be done and the woman should be given proper care till delivery and after. But unfortunately, the woman suffered a miscarriage and the infant died in the womb later.

In a case of *Surjibhai Badaji Kalasva v. the State of Gujarat*<sup>xx</sup>, a 13-year-old girl became pregnant by sexual abuse. She was 26 weeks pregnant when their parents found about this. When she was taken for the termination, the doctors refused to perform abortions and the court held that it would be a danger for the life of the girl. The decision of the court was acceptable concerning the facts of her pregnancy. The continuation of pregnancy also comes with risks. The girl is only 13 years old; the baby cannot be delivered naturally; the operation has to be performed and the infant will be premature. The case was held by their parents as the girl was a minor. The court also stated certain guidelines in which the girl should be under the guidance of the authority and she should be given counselling according to the state of her mental health. She was also provided with a certain amount for her treatment expenses. Court also added that the accused should be punished.



In the case of *Murugan Nayakkar Vs Union of India*, the 13-year-old was pregnant after she was raped. She was 31 weeks pregnant but the court agreed for the termination of pregnancy considering her mental health<sup>xxi</sup>.

***In other countries:***

The right to life as defined under the International Covenant on Civil and Political Rights says that every human being's life is to be protected which includes the rights of the unborn baby also. Moreover, the Conventional Rights of the Child recognizes the child as the right-bearing person who is entitled to the protection under special needs.

The measure to prevent abortion and save the life of the unborn child, using barrier methods and family planning is suggested. Hence in countries like Peru, abortion is a criminal offense. It is only permitted when the maternal life is in danger. The abortion cannot be done in case of a disability recognized in the foetus. In the case of *Karen Noelia Llontoy Huamán v. Peru (K. L V. Peru)*,<sup>xxii</sup> the foetus was diagnosed with the anencephaly i.e. a disorder where the baby is born without the brain and the skull. The government hospital of Peru declined to perform the abortion due to unclear regulations in the Peru government. The pregnant woman was 17-years-old, she has to go through many complications until the delivery. She breastfeeds the child for four days, after that the baby died. She has to suffer severe depression.

If the abortion was permitted, the sufferings would have ended before. Due to the lack of proper regulations in the Peru government, the baby died and the mother had to undergo further depression including the postpartum.

***The doctrine of double effect:***

The principle of this effect is that act of goodness is attained by performing a small deed which is slightly evil. This is formulated as that in the case of self-defence the act of killing is permitted. Quoting this principle here, the termination of pregnancy can be done it comes harming the maternal life.

If the good thing is done without the negative reactions then it can be performed. The medical practitioner who believes that termination of pregnancy is a moral wrong, in order to save the mother from harmful caused due to foetus performs the termination. This is a classic example of the doctrine of double effect.

***Right to choose:***

In *Hinsa virodhak Sangh v. Mirzapur Moti Kuresh Jamat & Ors*, it was held that “**The ability of an individual to make choices lies at the core of the human personality**”. By depriving the female citizens of India of their ability to exercise their right to choose their somatic reproductive preferences, there is a severe infringement on their right to life and the right to dignity<sup>xxiii</sup>

***Narrow Tailoring test:***

The *compelling state interest*<sup>xxiv</sup> of the government i.e. to satisfy the aim to safeguard the right of the unborn child should undergo great scrutiny that is one right should not suffer from another that is there must be a balance should be stricken between the right of the unborn child and the somatic reproductive right of the mother (woman) and the measure so taken should be tailored in a manner that infringes the right in the narrowest manner i.e. it should satisfy *narrow tailoring test*<sup>xxv</sup> to achieve its goals with a minimal interception.

## **REASONS FOR TERMINATING A PREGNANCY**

***The major reasons for the termination of pregnancy are as follows:***

The termination of pregnancy is one’s personal concern. Sometimes it is done because of the health issues in maternal and foetal life.

- **Maternal life in danger**  
When the pregnant woman’s life is in danger i.e. when the pregnancy may cause serious health issues that may result in the death of the pregnant woman, the termination can be done.
- **Complications in pregnancy**  
If the pregnancy has certain issues like slow growth of the embryo, breathing difficulty for the foetus, recognition of preterm growth, placental abruption, etc, then the abortion is preferred<sup>xxvi</sup>.
- **Serious health problems in foetus**

If the foetus is recognized with any disorder like hormonal problems or it is found to be handicapped or any other disorders, the termination of pregnancy is permitted.

- Accidental pregnancy

If the birth control measure did not work and the pregnancy happened without the knowledge of the parents, the termination of pregnancy is done. This is the major and common reason for the termination of pregnancy.

- Economical reason (more than 2 children)

If the woman has two kids and a moderate earning family and she found that she is pregnant again, the termination of pregnancy is done. The main reason is that the couple has no source for raising the other child.

- Affects the mental health of pregnant women

If the pregnancy is caused due to rape, then the termination is done. It will severely affect the mental health of the woman. If the mental health of the woman is likely to be affected by the hormonal imbalance or stress, then the termination of the pregnancy is done.

In case the pregnancy is caused by rape, the pregnant woman cannot be compelled to seek the permission of the Court. The DNA test must be taken in the case of Rape. The same procedure said in the Medical Termination of Pregnancy is applied in the case of Rape also. In case the pregnancy exceeds 20 weeks then the permission of the High Court is necessary. The issue will be then referred to the medical board<sup>xxvii</sup>.

During this mass lockdown, a minor girl who was 15 years old was raped by her own father and grandfather. The girl was found to pregnant for 25 weeks. The Madras High Court permitted for the termination of the pregnancy. The court said that considering the social and psychological aspects the termination can be done. The sample of foetus was asked to be preserved as the evidence<sup>xxviii</sup>.

The rape victims should be allowed to undergo the termination of pregnancy as they were mentally affected because of the trauma they faced due to rape. They should be allowed to undergo the termination process even though the period of pregnancy is more than 20 weeks. It is not fair to stop them from the process of abortion and add more pressure to them in their

sufferings. The committee should be set up for giving counselling for saving them from their mental sufferings.

The pregnancy caused due to rape is a serious issue that the government should consider. The state should take the necessary steps to address this issue. A separate committee can be made for taking care of the victims of rape and sexual abuse. The victims should be given constant care and the laws should be made considering the welfare of them.

## **RISKS IN THE TERMINATION OF PREGNANCY**

There are some risks in the termination of the pregnancy. If the pregnancy exceeds 20 weeks, there would be many complications that may result in endangering the life of the mother. Even though the pregnancy is done, it will result in continuous bleeding for a few days. In the growing technology, anything is made possible. Likewise, the termination should also be done even though it exceeds 20 weeks without endangering the life of the mother. The failure in termination shows the inability of the technological era in the medical field.

The state should take measures in developing the technological features in aspects of the termination. This would help in balancing the mental health of maternal life.

It is to be noted that One out of 8,475 women dies from pregnancy complications<sup>xxix</sup> and the most common risks in the termination of pregnancy include:

- Pelvic Infection
- Incomplete abortion
- Blood clots in the uterus
- Heavy bleeding
- Cut or torn cervix
- Perforation of the uterus wall
- Anaesthesia-related complications
- Rh Immune Globulin Therapy (Include Long term medical risks)
- Can lead to the complications in the future childbearing

These occur due to the unmonitored or unethical termination of pregnancy in this country.

## **IMPORTANCE OF TERMINATION OF PREGNANCY**

The termination of pregnancy is done in order to avoid unwanted pregnancy. It is a decision of a woman over her body. Women face many consequences during their pregnancy. The physical change over her body results in stressing her psychological health. Unwanted pregnancy may affect the mental health of women.

No woman should regret giving birth to an innocent life. Women are being shamed for terminating their pregnancy in many countries as it was against morals. Getting pregnant should never be seen as a crime for having sexual intercourse. The termination of pregnancy is done in order to save the woman from the future consequences of getting mentally traumatized.

The procedure of termination and legal restrictions which she has to undergo in case of late termination will affect her psychologically more than the pregnancy itself. The woman, who wants to abort her pregnancy, should be permitted to undergo abortion whenever she wants to unless it is harmful to her own life. She should be given counselling and constant care aftermath of the procedure.

According to research, Four months after having an abortion, four in 10 women in a clinic-based sample studied in 1975 had unresolved negative feelings about abortion. They differed from the rest in more often having “attributes that suggested avoidance of feelings or a negative self-image.” They also reported fewer stable relationships and less support from their partners than women whose feelings about the procedure were resolved.<sup>xxx</sup>

But no studies have given proper evidence to prove the side effects on their mental health such as depression, anxiety, and stress. The state should provide a proper means of counselling and treatment for both physical and mental health post the abortion of the woman.

## **CONCLUSION**

The somatic reproductive right which includes the right to terminate the pregnancy is one of the most important yet shadowed right in the present society. The importance of this right can be understood only when there is a broader mindset that believes that the right of a living human is far more important than an unborn human. Women should not be shamed for their choice to

terminate a pregnancy. In a society where we are slowly progressing towards equality of the genders, we need to understand that both men and women have the equal right to decide whether or not to have a child.

This article is written to enlighten the importance of the abortion rights of the woman and to answer the title of this article the right to terminate the pregnancy is both a right and a choice of the woman to exercise the same. When the consent during sex is important, the consent of the woman to whether or not to carry on the pregnancy is equally important too. This is one of the most important rights of an Indian woman, apart from the other rights provided under this country's constitution.

## ENDNOTES

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