

**A COMPARATIVE ANALYSIS OF ABORTION LAWS AND PRACTICES IN
INDIA AND OTHER COUNTRIES-
AFTERMATH OVERRULING OF ROE V. WADE**

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Abstract

Abortion is defined as the deliberate termination of a pregnancy, i.e., pregnancy termination caused by a person. Additionally, it describes ending a pregnancy either naturally or artificially before the foetus achieves viability, which usually happens after the 28th week. With the right medical care, babies born a few days before the 28th week are reported to have survived. The terms abortion, miscarriage, and preterm birth are all used interchangeably in medical terminology and are legally valid. Natural abortion is a regular occurrence caused by poor health, a mother's damaged reproductive organ, shock, fear, and other factors. Accidental abortion occurs when the uterus is traumatised as a result of an accident, as well as a direct or indirect impact on the uterus strong enough to displace the ovum from its natural attachment. Abortion may occur spontaneously or naturally for a umpteen number of reasons, like poor health, fault in reproductive organs of woman, shock, fear, and so on. This research paper examines India's abortion laws and regulations and how they affect the human rights of both the mother and the unborn child. A comparison with equivalent provisions in other countries also carried out.

Key words

Abortion, termination of pregnancy, miscarriage, pregnancy, accidental abortion.

Prologue

Women's right to take decision over their sexuality, fertility and reproduction matters are treated based on their self-determination. The problem of abortion is a highly discussed matter because the concept of abortion is intertwined to the life of human being. Majority of religions are against the concept of abortion². The right to life is a broad concept and the right to life recognized under article of the constitution of law which indicates "no person shall be deprived of his or her life and personal liberty except according to procedure established by law"³. Hence the term person includes men and women⁴.

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² S.N Parikh, right to life and unborn person, 11, (1st edition, 1984)

³ Article 21 of the constitution of India.

⁴ Sharma, pre conception and pre-natal diagnostic act, 1984. a study of its provision and working, (cri jour 251, 2007)

ABORTION-MEANING AND SCOPE

The word "abortion" comes from the Latin word "abortus," meaning "to destroy the foetus." In the medical sense, abortion refers to the physiological process of avoiding a pregnant uterus; however, in the legal sense, it usually refers to induced abortion. Abortion is being defined consistently by the World Health Organization (WHO).⁵ The distinction between abortion, miscarriage, and premature death is not recognised by law, but the three words here indicate the ejection of an embryo or foetus during the first, second, or third trimester of pregnancy. Abortion can be spontaneous or induced, and it can be classified as legal or unlawful. The term "spontaneous abortion" refers to abortions that occur as a result of a pregnancy risk that is beyond the pregnant woman's and medical practitioner's control.⁶

Previously, women chose abortion techniques that were unsanitary and harmful to their health. Many abortions are carried out in violation of the law. Women in India used to abort their babies by eating raw papaya and sitting over a hot stove, among other methods. There are several cases of women opposing abortion laws and banning abortion in numerous counties, such as Ireland and Poland.⁷ The procedure for performing abortion varies greatly from country to country and from ancient to modern times⁸.

HUMAN RIGHT ISSUES IN CONNECTION WITH ABORTION

The human rights of the mother and of the foetus might sometimes be incompatible. Every mother has the right to undertake an abortion, and both the mother's and the unborn child's rights are protected by basic human rights. Previously, abortion was not a legal option in society.⁹ Women's reproductive freedoms are also human rights. The most fundamental human right, without which all other rights are useless, is the right to live. Every single human being has an inalienable right to life, which no one may take away. In today's society, the concept of abortion is an extremely difficult and contentious topic. Termination of pregnancy is defined as the removal of a foetus before the 20th week of pregnancy when the foetus weighs less than 500 grams. Miscarriage is explained in Indian Penal Code 1860. It is considered a criminal offence. Similar to the right to conceive is the right to abort. The right to an abortion is protected by Article 21 of the Indian Constitution.

When it comes to abortion, the lady enjoys the same basic rights as any other citizen in our country. The right to life includes the option of having or not having children.

⁵ Manish Garg, right to abortion, available at. legal service India, (Nov. 2019,7pm)

⁶ Reproductive freedom: a fundamental liberty, <http://www.lectlaw.com> (visited on Jan. 2 2020,9am)

⁷ Roe v. Wade, 410 US 113 (1973): 35 LED.2d .147)

⁸ Ahmed Siddique, criminology: problems and perspective, 465(1st edition, eastern book co, luknow,2007)

⁹ K Mathiharan and Amrit K Patnaik, (eds) Modi's medical jurisprudence and toxicology, 1013(1st edition, lexis Nexis butter worth, new delhi,2006)

According to the constitution, abortion is lawful in our country. The right to terminate a pregnancy was not accepted by society in ancient times. It was regarded as a severe crime at the time. Later, society's thinking changed and abortion became acceptable in course of time. Various countries have legalised one-to-one abortion.¹⁰

In the famous case law *Roe Vs. Wade*,¹¹ the decision of the court of law is the reason behind legalization of abortion law.

In following conditions abortion can be permitted.

- “If the pregnancy contains any risk factors or such pregnancy cause any risk in life of the pregnant woman then such pregnancy can terminate.
- If the period of pregnancy result any high injury to the woman, the injury may be physical or mental then abortion can conduct.
- If the pregnancy result to the child any defect, may be mentally or physically, the continuation of pregnancy can be stopped.”¹²

The terms miscarriage and abortion are not interchangeable. From the fourth to the seventh month, abortion is performed.¹³ Article 6 (1) of the international covenants of civil and political rights protects the fundamental right to life from the moment of conception.¹⁴ There has to be a legal rationale for this. For example, a pregnancy caused by rape or the need to preserve the mother's life. Induced labour is also supported by some members of the public.¹⁵

OBJECTIVE OF THE STUDY

The objective of the article is-

- To make a comparative study of abortion laws in India and other counties.
- To analyze the right to abortion of a woman

HYPOTHESIS

The law on abortion in India does not address the Human Rights issues as in other countries The right to life of a mother has priority over the right to life of an unborn child.

¹⁰ R.M Jhala and V.B Raju, medical jurisprudence, 426-428(1st edition, eastern book company, luknow,1990)

¹¹ Roe v. Wade,410US 113(1973)

¹² Chitra Subramaniam, “Right to abortion in India-Legal right to terminate pregnancy”, <https://www.orfonline.org/expert-speak/india-new-abortionlaw-progressive-human-face-62023>.

¹³ Jonathan Herring, medical law and ethics, 286-287(oxford university press, newyork,2010)

¹⁴ Cook, Dickens, reproductive, health and human rights: integrating medicine, ethics and law 148 (oxford university press, newyork,2003)

¹⁵Jaime M. Gher and Christine, abortion as a human right—international and regional standard, HRLR 249-294 (2009)

ABORTION AND WOMEN'S RIGHT

Women's right to abortion is protected in following conditions:

- If the health of a woman is affected by pregnancy.
- If it's critical to keep the mother's physical and emotional well-being.
- A significant probability that the unborn child would have severe physical or mental handicap.

ABORTION AND RELATED LAWS IN INDIA

In our country the laws relating to the abortions come under section 312 to 316 of the Indian Penal Code 1860 and the Medical Termination of Pregnancy Act 1971. Medical Termination of Pregnancy Act clearly says that there is no specific right to woman to terminate her pregnancy. If a woman wants to terminate her pregnancy the whole decision-making capacity is coming under the medical practitioner. the doctor terminate pregnancy in good faith and lawful manner.

Indian Penal Code and Pregnancy Act plainly limit women's right to health, privacy and dignity. These rights are protected by Article of the Indian Constitution.

Abortion on demand in a safe environment is not permitted in our country because it may lead to women seeking dangerous covert abortions, which may result in their death, and it will also jeopardise their right to health, to life and to dignity.

In India there are a lot of statute regarding the concept of abortion and clearly specify that the unborn acquire visibility only after born and the state interferes in the abortion matters only after a period of viability.

Every right has two sides, just like a coin. One side of the right is interest, such as reputation, property and money, and the other side, capacity and power, which means everyone, wants to live in a society with a good name, and the state should protect that interest. For example, the woman who wants to terminate pregnancy can go to a doctor, who has the responsibility to provide medical treatment in a safe manner and to protect the patient's health.¹⁶

In the event of rape, the victim lost her dignity in society and wished to survive in society like the rest of women. If the abortion is not performed according to her wishes, she may commit suicide or have an illegal abortion, both of which may result in her death. As a result, the unborn have no desire to have their rights recognised, hence safeguarding the life of the mother comes first, followed by the unborn.¹⁷

¹⁶ Sanjukta Das Gupta ,Dipankar Sinha et.al,Media,Gender and Popular culture in India.Sage Publications,NewDelhi,16(2012)

¹⁷ Naman Maheshwari, medico legal analysis,314-332, (1st edition, Kamal publishers,2018)

Because the unborn cannot make decisions, they are unable to choose anything. Unborn in her mother's womb entails that she is merely a part of her mother's body. It is solely the mother's decision if she does not require the child. If she believes she will be unable to care for the child, abortion/termination is a good option.

In India, abortion is permitted only during the first 20 weeks of pregnancy, or if the mother's mental health, the pregnancy's risk, or the pregnancy is the consequence of rape or any other socioeconomic reason. In our country, abortions are only performed by two registered doctors between the weeks 12 and 20 of pregnancy. Due to the passage of abortion regulations in our nation, the number of sex selective abortions has skyrocketed.

Due to an upsurge in female feticide in our society, the Indian government adopted the Prevention of Sex Selection Act in 1994. Boy child is preferred by both parents in our country. In India, the range of female feticide has been expanded by enacting strict abortion regulations. Even if it is difficult to manage female feticide in our country, the government provides many programmes to girls till the prevalence of female feticide rises. In some nations, abortion is legal, whereas in others, it is illegal. However, terminating an unborn child by choosing the sex of the child is against human rights and prohibited in every country. Abortion is not legal in India for a variety of reasons. For example, law makers believe that legalising abortion in India will result in a high percentage of female feticide and abortion in our country.¹⁸

ABORTION AND INDIAN CONSTITUTION

Part III of the constitution has an article dealing with the right to life. The right to life includes the freedom and right to privacy. The most significant fundamental right in the nation is the right to life.¹⁹ Women have the right to choose whether or not to reproduce, as well as the right to their health. India has passed clear laws and policies promoting reproductive rights. As a result, every woman has unrestricted access to her body.²⁰

ABORTION AND INDIAN PENAL CODE

In India, the Indian Penal Code, enacted in the nineteenth century, made abortion illegal. It was classified as a crime under the Indian Penal Code, and both the woman and the abortionist were subject to penalty. However, there was one apparent exception: abortion was lawful if it was performed to save the mother's life. Under India, abortion is lawful under the Indian Penal Code in certain circumstances, such as when the pregnancy poses a substantial threat to the woman's mental or physical health. Mothers' lives are more precious than those of unborn children. Given that she is the origin of the foetus, the mother has a duty to guarantee a safe delivery. Sections

¹⁸ Nayana Joshi, medical jurisprudence and toxicology, 234-240, (1st edition, Kamal publishers, 2018)

¹⁹ Naina Kumar, current abortion practices in India, 132, (1st edition, 2018)

²⁰ Prof T.D Dogra, medical jurisprudence and toxicology, 234 (11th edition, 2005)

312 and 313 of the Indian Penal Code, 1860, classify miscarriage as a serious offence punishable with life in prison or other fines.²¹

Before the Medical Termination of Pregnancy Act of 1971, intentional miscarriage was punishable by imprisonment for up to 11 years under section 312 of the Indian Penal Code. If abortion was done in good faith, and to save the life of a mother it was not punishable under the Indian Penal Code. The offender must be a woman. Abortion can be divided into two types:

- Woman with child in the early stage of pregnancy
- Woman quick with child

In *Queen Empress Vs. Ademma*²², women with child in the womb comes under section 312 of Indian penal code and in this case court acquitted *Ademma* charge of causing miscarriage under section 312 of Indian penal code.

In *Malayara Seethe* case²³, The court charged the offence of inducing miscarriage to a woman with a child in this case under section 312 of the Indian penal code and associated medical jurisprudence that in the case of appellant, a village nurse, the kid born in this case lived seven months and was not a miscarriage. The court ruled that registered doctors and nurses can conduct such activities because they intend no harm to the mother. The desire of the woman to avoid pregnancy is no justification in termination of pregnancy. In 1886 in *Ademma* case, court held that the absolute duty to mother to save the child. Indian penal code does not provide punishment for attaining miscarriage. But such attempts are punishable under section 511 that a person is liable for attempt to commit miscarriage or criminal abortion under section 312 read with 511 of Indian penal code.

In' *R Vs. Spicer*,²⁴ the accused is charged of providing a pill for the purpose of performing an abortion, which may result in an abortion. For attempting to commit a miscarriage, the offender is responsible according to the law.

In *queen Vs. Arunja bewa*²⁵, the accused attempted abortion when the woman's pregnancy was approximately nine months old, and the attempt resulted in the birth of a child, thereby avoiding conviction for causing miscarriage.

*Munnah binti Vs. public prosecutor*²⁶: In this instance, the accused attempted illegal abortion by inserting a powerful object into the vagina, resulting in a miscarriage. The court-imposed punishment to the accused with imprisonment.

²¹ Miscarriage can be an offence in following conditions-1) Miscarriage is committed voluntarily 2) it is not in good faith 3) not conducted to save the life of mother.

²² *Queen empress v. Adamma*, 11 I.L.D madras (N.S)653, (1886) I.L.R9,369

²³ *Malaya seethe*, AIR1955 MYS 27

²⁴ 2016 SCC 3

²⁵ *Queen varna bewa*, (1873)19 Suth W.R (cr.Rul) 31

²⁶ *Munnah binti v public prosecutor*, AIR,1996, SC97, CR. LJ82

3.5 THE MEDICAL TERMINATION OF PREGNANCY 1971:

The Government of India introduced a comprehensive Bill covering a variety of pregnancy termination scenarios in Parliament in 1970 after carefully reviewing the Shah Committee's recommendations. Then-Deputy Minister of Health D. P. Chattopadhyaya changed the Medical Termination of Pregnancy Bill 1970 and introduced it in the Lok Sabha on August 2, 1971. After the Lok Sabha passed the bill, D.P. Chattopadhyaya reintroduced it in the Rajya Sabha. The Medical Termination of Pregnancy Act (MTPA) 1971 was passed by both Houses of Parliament, the Lower House and the Upper House, in August 1971. The President of India signed the Act on August 8, 1971, and it went into effect on April 1, 1972, after the government issued directions for its implementation, as required by Section 7 of the Act. With the enactment of the Act, medical abortion became a prison sentence with favourable conditions to safeguard the mother's health.²⁷

Abortions are not illegal under current legislation if they are performed for one of many specific reasons within a specific time frame by a specific specialist and under specific conditions.²⁸

The MTPA's operational section has modified the harsh abortion law found below phrase 312 of the Indian Penal Code by enabling pregnancy termination in a variety of circumstances.²⁹

THE MTPA¹ AND¹ ITS¹ IMPLEMENTATION:

Despite the fact that Section 3 of the MTPA allows for termination in specific instances, there are a number of challenges with the Act's execution. Based on the amended standards, pregnancy can be terminated without the permission of the husband in any recognised clinic or organisation that provides the service after filling out a form. The clinic must issue a registration number and store the form in a sealed envelope, and the physician is responsible for maintaining confidentiality in accordance with the client's wishes. The political will of the government is crucial to the implementation of the MTPA.

Thus, the MTPA came into force on 1st April 1972. It alters laws pertaining abortion. MTP Act was originally enacted to prevent illegal abortion, but it has since evolved into a means of legalising an illegal preference or validating a criminal offence. Today, crook abortion under the name of MTP is a common occurrence in many MTP health facilities or nursing homes. Following a termination or continuation of pregnancy, the MTP Act allows an abortionist to judge relative merit and demerit.³⁰

²⁷ Indira Jaising, medical termination of pregnancy, 45-60, (1st edition, universal law publishing, 2019)

²⁸ GOI MTP rules and regulation, the gazette of India, 2003, new Delhi

²⁹ *Jabhar V. State*, AIR 1966 All 590, 1966 CrLj 1363

³⁰ Indira Jaising, medical termination of pregnancy, 23-34, (1st edition, universal law publishing, 2018)

However, the reality is that, instead of contemplating the benefits and drawbacks of abortion, abortionists in many elderly homes and MTP sanatoria now frequently assist immoral preference and perform out illegal abortions for petty egotistical purposes. As a result, MTP's goal has shifted dramatically in recent years. Currently, MTP is not backed up by the useful resource of instances that have been accepted under the Act. Termination of pregnancy is given the decision of MTP today to receive prison help. In fact, any kind of abortion delivery isn't always MTP, which is necessary by the use of conditions other than those covered by the Act.

The Indian government established the Santi Lal Shah Commission to recommend reforms to India's abortion legislation. The MTP Act was changed as a result of the commission's first recommendation. The medical termination of pregnancy act is a short act with eight sections. This act is a watershed moment in Indian history. The licenced medical professional must carry out the medical termination of pregnancy act in a way that complies with the law and is done in good faith. The state medical board requires doctors to be registered.

The MPTA no longer protects the rights of the unborn child, its safety is indirect at best a derivative traceable to the female's safety. The Act's most important feature is that it prohibits women from terminating their pregnancy after twenty-one weeks. Under the MTPA abortion is legal within twelve months, however, it should be based on a medical opinion. A close look at MTPA would make it clear that an expectant woman cannot claim that her pregnancy is unintended. MTPA prohibit induced abortion under any circumstance. She has the right to present reasons for the pregnancy from the stand point of the Act, nevertheless, it is the medical authority who would decide whether or not the girl fits in the Act's standards. According to a competent scientific opinion, pregnancy poses a risk to the woman's life or may seriously harm her physical or mental fitness, or alternatively, there is a significant risk of giving birth to a child who is severely disabled. The medical practitioner has the responsibility to indicate the legal risk of punishment with imprisonment. The regulation stated above reveals that a pregnancy can be terminated up to 20 weeks of fertilization and not beyond that. It is necessary to reiterate that for abortion, only the consent of only girl is required, not anyone else.

ABORTION LAW REFORM SINCE 2000:

In order to reduce administrative delays, the amended MTP Rules establish a suitable body for registration and call for the District Committee to test out a software programme for registration within a reasonable period of two months of receiving it, and to method the approval internally the following two months if no deficiencies are placed, or within two months of rectification of any cited deficiencies. The revised MTP standards do not specify what steps should be taken if the permitted procedure is still not finished within the specified time frame and the The revised MTP guidelines simplify the body requirements for first-trimester abortion clinics. However, every

facility wishes to have professional employees to recognize headaches and provide or be capable of referring girl to emergency care centres.

The legitimacy of the MTP Act was questioned in 2005, which was a long time ago. Explanations I and II to Section 3 of the Act, as well as Section 3 (2) (a) and (b), have been considered to be unethical and in violation of Article 21 of the Constitution. In this case, the court had to determine when the unborn child begins to have a life and whether the stated rules infringe that child's right to life. The Court, however, declined to discuss the larger issue of abortion ethics or when the foetus becomes human enough to warrant discussion, saying that its main concern is the legality of the Act's pertinent provisions. The Court determined the MTP Act to be legitimate because it complies with the goals and aspirations of Article 21 of the Constitution but declined to comment on whether or not it recognised the unborn as a "man or woman." Even though a foetus is a live entity, the Court avoided making a decision when questioned whether the MTP Act violated Article 21 by being evasive and suggesting that it had become difficult to decide precisely. *Dr. Nikhil Dattar & Ors. Vs. Union of India*,³¹ has given rise to an immoderate debate on abortion laws within the country. The key problem herein is whether or not the statutory time restrict for abortion should be stepped forward from the presently prevalent twenty weeks of gestation to twenty four weeks or above. "The answer of route is not easy to attain at. The issue entails complicated questions of regulation, medical technology and morality. The MTP Act lets in abortion to be achieved most effective whilst the pregnancy poses a threat to the lifestyles of the pregnant female, or, of grave harm to her bodily or intellectual fitness, or, even as there's a significant risk of the kid being born with bodily or highbrow abnormalities an awesome way to be critically handicapped."

PRENATAL DIAGNOSTIC TECHNIQUES ACT (PNDT ACT 2002)

In India, with the introduction of amniocentesis the use of sex selection testing began. A ban on government institutions to offer such services prompted the spread of private diagnostic centres that offered reasonably-priced sex selection tests to the people, resulting in the decline of female population. Women's organisations and social activists lobbied the Parliament for more than ten years to pass a law outlawing intercourse-self-control testing in order to combat the phenomenon. As a result, the Pre-Natal Diagnostic Techniques Act was passed in July 1994. It purported to be a good step to counter the massive use of pre-natal diagnostic techniques to destroy female foetus. It was therefore believed that adding new requirements for getting an abortion might further limit a woman's access to those services.³² The purpose of the PNDT Act is thus doubled. To begin with, prenatal diagnostic tests should be controlled and restricted to the detection of chromosomal abnormalities, congenital malformations, and sex-related problems. Second, to prevent the misapplication of

³¹. Nikhil Dattar & Ors. V. Union of India (SLP civil 5334/2009)

³² Shri. S.N Gour, Medical jurisprudence of India, 235 (10th Edition, law publishers,1953)

such technology for prenatal intercourse preference, which could lead to intercourse-selective abortions? The Act further stipulates that only licenced individuals are permitted to use prenatal diagnostic strategies.³³

3.8 CRITICAL APPRACH TO INDIAN LAW ON ABORTION

1. The Act does not define substantial risk. Only a medical practitioner can assess the risk factor.

3. The term "grave damage to a woman's physical and mental health" is not defined in the MTP Act. The definition is inclusive of the suffering of a woman and grave injury to her mental health.

4. The issue of consent in rape-related abortions is hazy.

5. The provisions of the Hindu Marriage Act and the laws governing medical abortion are at odds with one another. In the case of *Sushil Kumar Vs. Usha*³⁴ wife committed abortion without taking consent from her husband and the divorce petition was filed on the ground of cruelty and the Delhi high court upheld it as a divorce. It is evident that the MTP Act and the Hindu Marriage Act are at odds. The court ruled that a wife can perform an abortion without her husband's consent. The husband's consent is irrelevant.

JUDICIAL ATTITUDE

- *D. Rajeshwari Vs. State of Tamil Nadu*³⁶

In this case, an 18-year-old unmarried female decided to terminate her pregnancy after three months because she was mentally and physically ill and was not able to continue the pregnancy. Her pregnancy was as a result of rape too and the court ordered her pregnancy to be terminated.

- *Dr. Nisha Malviya and Anr. Vs. State of M. P.*³⁷.

Accused raped a 13-year-old girl and made her pregnant; two other co-accused took her to have the pregnancy terminated, resulting in a charge against them for performing abortions without the mother's consent; the court found accused guilty of terminating pregnancy without the mother's consent.

³³ A. Keith mant, principles and practices of jurisprudence, 112 (13th edition, southern law house, delhi, 2000)

³⁴ AIR 1987 Del. 86

³⁶ 1996 Cri. L. J 3795

³⁷ 2000 Cri. L. J 671

- *Murari Mohan Koley Vs. The kingdom and Anr.* ³⁸

In one case, a mother desired an abortion since she was pregnant when her daughter was 6-month-old. She was then hospitalised, and then transferred to another hospital, where she died. Abortion was not permitted in this instance because the court found that a woman's right to an abortion is unalienable and that no one may take it away from her. The judiciary is crucial in protecting women's rights.

- *Shri Bhagwan Katariya and Others Vs. State of M.P.* ³⁹

The applicants are Navneet's younger brothers and Bhagwan Katariya, Navneet's father, and a female has been revealed to be married to Navneet. Following her pregnancy, the complainant's husband and other members of her immediate family raised the idea of an abortion, which was carried out without her permission. According to the court's ruling in *Suchitra Srivastava v. Krishnan*, "a doctor is permitted to terminate a pregnancy under particular circumstances, and if the pregnancy was terminated in compliance with the terms of regulation, it must be considered that it was done in good faith."⁴⁰

The Supreme Court and the High Court of Madras have both backed women's right to choose whether or not to continue with a pregnancy. The Supreme Court found in the *Suchita Srivastava* case that the nation has an obligation to protect a girl's reproductive rights as part of her article 21 right to liberty, dignity, and privacy.

- *Samar Ghosh Vs. Jaya gosh*⁴¹

"If a spouse has a vasectomy (sic) or an abortion without a scientific reason or without her husband's agreement or understanding, such an act can also be considered highbrow cruelty." This decision added to the complication surrounding consent requirements by holding that a spouse who terminates a pregnancy without her husband's knowledge or consent may be guilty of mental cruelty, which is grounds for divorce. While this ruling does not affect the need that an abortion be performed with parental consent, it does foresee a spousal "stake" in a girl's reproductive health. 'The demand for spousal consent reflects patriarchal attitudes that deny women physical autonomy and equality.'

COMPARATIVE ANALYSIS OF ABORTION LAWS IN VARIOUS COUNTRIES

UNITED STATES:

At the moment, the United States of America has its own set of abortion laws and procedures. The concept of abortion was not a federal subject under the American

³⁸Murari MohanKoleyVs. The kingdom and Anr.2003, 609 HC

³⁹ Shri Bhagwan Katariya and others Vs. State of m.p,2000, (4)

⁴⁰Suchitra Srivastava v. Chandigarh Administration, (2009), C.W.P NO 8760

⁴¹Samar Ghosh v. Jaya gosh, (2011), 4SCC511

constitution and the states enacted their own abortion laws in the mid-19th century.⁴² In 1821, Connecticut became the first state in the United States to pass abortion laws. Abortion had previously been illegal until that year. In 1828, the state of New York in the United States passed abortion laws. The New York state statute serves as an example for early abortion legislation. As a result of this regulation, the notion of therapeutic abortion was developed, which indicates that abortions are performed in order to protect the mother's life. Abortion, on the other hand, must be performed with the advice of two doctors.

After the civil war in the United States, eight US states dealing with abortion laws superseded common law legislation pertaining to abortion in the 1840s. In the United States, abortion is lawful if it is performed on the advice of two doctors and is required to preserve the mother's life.⁴³

In 1955, the American Law Institute introduced liberal abortion legislation, which defined abortion as a procedure carried out by a licenced physician who believes the pregnancy poses a serious risk to the mother's life or has an impact on the mother's physical or mental health, or that the child has a physical or mental effect, or that the pregnancy is the result of rape. Earlier, *Roe v. Wade*⁴⁴ was the rule. It was overruled recently. In *Planned Parenthood v. Casey*,⁴⁵ The *Roe v. Wade* ruling was maintained by the US Supreme Court, which ruled that a woman's right to an abortion is a fundamental freedom. *Dobbs v. Jackson Women's Health Organization* overturned this stance.⁴⁶ In 2022, Here, U.S. Supreme court held that constitution of U.S. does not confer a right to abortion. This decision has created a lot of embarrassment not only among legal fraternity, but also among public at large.

A. Canada:

Since 1988, all pregnancies are allowed in Canada for abortions at any time and for any reason. As a result of this violation of a woman's right to privacy, the Supreme Court of Canada determined that an abortion restriction law is unconstitutional. It also stated that provincial scientific medical insurance covers all abortion rates with the use of insurance resources, but that it does not cover abortion performed freely in charitable hospital. Abortion is a felony in Canada in this fashion, even if it is performed for whatever reason.

Great Britain:

Abortion was legal in the United Kingdom in all circumstances, and women were allowed to abort their kids without any restrictions. This abortion may be regulated; it

⁴² *Roe v. Wade*, 41 L.W.4213,4221

⁴³ Bhargava, guide to medical laws, 501-511, (2nd edition, 2013)

⁴⁴ *Supra* n.40

⁴⁵ 505 U.S.833(1992)

⁴⁶ 2022 U.S.LEXIS3057.

should be licenced by physicians who issue certificates stating the reason for the abortion. It is also mentioned that abortion can be conducted without a doctor's clearance if the girl's intellectual or physical well-being is jeopardised by continuing the pregnancy, if the child is born with significant defects, or if the mother is still living after 241 weeks of pregnancy. Every twelve months, up to lakh abortions are performed in the United Kingdom without any legal restrictions. Due to a broad interpretation of the 1967 Abortion Act, which permits abortion for a variety of reasons if doctors authorise it, abortion is widely accessible in the United Kingdom. These goals can also include ending a pregnancy within the first 24 weeks of pregnancy if it is linked to a foetal abnormality, preserving the mother's life, safeguarding her physical or mental health, or for social or economic reasons.⁴⁷

Russia:

Statistics show that the number of abortions performed each year in Russia is currently higher than the number of live births in the United States. The first 12 weeks of pregnancy, as well at any time during the pregnancy if the mother's life or health are in danger, or if the infant has severe abnormalities, are all free of charge for abortions. Since 2003, the United States has legalised abortion between the 12th and 22nd weeks of pregnancy for certain societal reasons, such as incarceration, rape, or spousal disability or death.⁴⁸

4.5 Africa

In Africa, the pregnancy termination is banned and is only justified on medical grounds. Tunisia allowed certain pregnancies to be terminated after 1965. If a mother has five or more children, she has the option to terminate the pregnancy. However, a qualified medical practitioner in a hospital may terminate a pregnancy within three months. If the pregnant lady's mental or physical health is really poor and would harm the unborn child, and the pregnant lady is hospitalised before the termination, the abortion can be performed after the verification of the certificate signed by the medical practitioner for the termination of pregnancy.⁴⁹

China:

In China, abortion is entirely legal and there are no set restrictions. Opponents claim that despite the fact that intercourse-selective abortion is illegal, China's one-toddler-per-family regulation forces couples who want to have a son to abort female foetuses. In China today, 120 males are anticipated to be born for every 100 women. Human

⁴⁷ "Know Your Abortion Rights in UK", <https://www.132healthwise.com/know-your-abortion-rights-in-the-UK.php> as on 1PM 29th November, 2022.

⁴⁸ Tom parfitt, Russia moves to curb abortion Rates, MEDICINE AND HEALTH POLICY, VOL.362, issue 9388, p.968 (2003)

⁴⁹ Christopher Tietze and Deborah, A Dawson, induced abortion: A factbook (1st edition, 231, 2013)

rights organisations have long charged that the Chinese government supports forced abortions as a method of reducing population growth. It is believed that the practise has become less common than it was in the 1980s and the early 1990s, when best-toddler coverage was implemented more tightly.

Abortion can be carried out freely in China, without any restrictions or prohibitions, and without any time constraints. It is set up in such a way that any woman can abort her child at any point throughout the pregnancy. In China, however, sex selection1 abortion is strictly prohibited. One toddler policy of the Chinese Government has been criticized by many luminaries on the premise that this coverage is the simplest reason for China's rising rate of 'Female Foeticide'.⁵⁰

Japan:

The Eugenic Protection Law of Japan, implemented in 1948, advocated liberal abortion and sterilisation policies in the interest of ensuring a genetically healthy population. A new law was passed in 1996 that prohibited any reference to eugenics and established guidelines for performing abortions within the first 24 weeks of pregnancy where necessary to preserve the mother's way of life or safeguard her physical health. In circumstances of rape, as well as for monetary or societal considerations, abortion is permitted.⁵¹ The Eugenic Protection Law was passed in Japan in 1948, and it promotes liberal abortion rules with the goal of protecting the fitness of the female and populace manage Eugenic safety regulation in such a way that pregnancy can be terminated with the least amount of risk to the child or lady's fitness. Despite all of these restrictions, Japan's Rules and Regulations enacted new rules in 1996, allowing any female to abort a kid within 24 weeks of conception in order to save the mother's life and protect a girl's intellectual and physical fitness. The law also allows for abortion in cases of rape and extreme social and financial hardship.⁵²

France:

The French legislature passed a law outlawing abortion in 1920. Abortion carried out without justification by a woman, a third party, or a doctor is criminal by a ten-year prison sentence. After World War II, there was a strict definition of abortion in 1939.⁵³ Under French law, abortion is only legal if it is performed to save the mother's life. The doctor should seek the counsel of two doctors before performing such an abortion, and after talking with the woman, the doctor should certify in writing that the abortion is essential to save the mother's life. You cannot be forced to get an abortion by a doctor.

⁵⁰ Elina Heminski, Illegal birth and legal abortions-the case of China, REPRODUCTIVE HEALTH, 2(2005)

⁵¹ National Eugenic Law, (1940)

⁵² Japanese criminal code, article 212

⁵³ The French public health code, article, L.161

Indonesia

Abortion is banned in Indonesia and is not permitted under any circumstances. Even if the abortion is performed to save the child's life, it is not justified. Induced abortion is punishable under Indonesian penal code article 346 to 349, which was enacted in 1915. Article 346 of the penal code states that if a woman intends a pregnancy termination, she faces a sentence of up to four years in jail.⁵⁴

If a man provides any fruits with the goal of causing abortion without the mother's agreement, will be sentenced to a maximum of twelve years in prison. If it causes the mother's death as a result of the crime, the sentence will be increased to 15 years. According to Article 349 of the code, abortions performed by a third party with the permission of the woman can result in a five-year sentence, or a seven-year sentence if the woman dies as a result of the abortion.⁵⁵

CONCLUSION

After a long period of debate and conflict, Ireland has voted to legalise abortion. Following the death of Savita Halappanavar, an Indian dentist working in Ireland, who was denied an abortion while suffering from a septic miscarriage and the regulation gained worldwide attention. The victory of Ireland is being celebrated all around the world, but the question remains: is it enough? Is it possible to legalise abortion?

Despite the fact that abortion has been outlawed in India for 47 years, about ten women perish every day as a result of unsafe abortions. In India, unsafe abortion is the third most common cause of maternal death. The 1971 Medical Termination of Pregnancy Act is the legislation that governs abortion in the United States. If it is best for the baby or the mother's health, this law permits women to have an abortion. However, in a ground-breaking decision in 2017, the Supreme Court allowed married women to seek abortions based on their own personal preferences; this decision no longer applies to unmarried girls. As a result, unmarried girls frequently have to rely on quacks and haphazard methods to have an abortion that jeopardize their lives.

SUGGESTIONS

1. The Medical Termination of Pregnancy Act does not define the term "aborted foetus" since an aborted foetus is not a human being. Induced abortion, according to the MTP legislation, takes a child's life. This statement requires greater clarification. As a result, the term "aborted foetus" was struck from the constitution.

⁵⁴ Penal code of Indonesia ,1932, article346

⁵⁵ Penal code of Indonesia ,1932, article 347(1)

2. From a constitutional standpoint, the Medical Termination of Pregnancy Act, section 3 should be amended to state, “if pregnancy occurs as a result of any contraceptive failure, it may result in grave injury to the mental health of the pregnant woman.” ‘May presume’ has been changed to ‘shall presume’. It signifies the couple's desire to end an undesirable pregnancy and allows them to enjoy their personal freedom (constitutional rights).
3. Because the Medical Termination of Pregnancy Statute does not indicate that an aborted foetus is not a person, the act has been used to challenge the use of induced abortion to end the life of an unborn child. As a result, these points must be clarified for the aborted foetus to be presumed from the definition of a person.
4. There is a pressing need to perform abortions in a sterile environment.
5. Even if the Medical Termination of Pregnancy Act forbids abortion on spurious reasons, the 20-week restriction for abortions is only acceptable; this limit should be raised because pregnancy can still cause problems after the specified time period. Because of technological advancements, abortion can now be performed at any stage. As a result, the time period could be extended.
6. Make abortion laws more effective, and hold women accountable for exercising their legal right to choose the number of children they want.
7. Provide safe abortion services as well. A proper amount of abortion education should be provided at the community level, including classes on safe and legal abortion as well as simple and safe abortion technology.