



Monthly BULLETIN

APRIL - MAY 2022 | Issue 06 |

Announcement

Call for Articles, Op-eds, cartoons, book reviews and other submissions on recent matters related to the theme of social justice.

Call for contributions for 'The Social Justice Blog'

Submissions should be made at :
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Inside this issue

Foreword - pg 1

Cover Story - pg 4

Judgements in focus - pg 6

News and Developments - pg 10

FOREWORD

ANALYSIS OF ABORTION RIGHTS IN INDIA FROM A FEMALE PERSPECTIVE

-Manasvi Gupta



Women's movement have led to liberalization of rights of women. A women's body and her reproductive system is her own right. But this is a pretense when we talk of women's right in regards to abortion. Amongst the moral and legal debates of abortion, the legislature and activists forget the rights of a women and her decision of abortion. Her privacy is violated and denied. The subject of her right over her own body and the choice she makes is condemned and over shadowed by a false sense of justice.

In India, abortion rights are governed by the MTP Act 1971, wherein the medical practitioner determine whether abortion is justified or not. It is the sole discretion of the Registered Medical Practitioner (RMP) to decide on health or humanitarian grounds.

IPC, 1860 and CrPC, 1973, criminalize inducement of abortion except for the purpose of saving the of the woman. This provision increased the quantum of safe abortions in India.

The Parliament felt the need for a legislation and enacted the MTP Act which regulated and considered abortions no longer illegal in instances where: -

- i) Reasons were established for performance
- ii) Abortion is performed in a specified time period
- iii) Abortion was required to be performed by RMP and under prescribed conditions

The most important provision of the Act is Section 3 which states that a pregnancy can be terminated.

One of the most progressive points about this law was that it identified the suffering caused to a woman because of being raped constitutes a grave injury to the mental health of the pregnant woman. But the MTP Act had faced various criticism from various feminist as it disregarded the autonomy of women.

First, The Act imposed a limit of twelve weeks within which a woman needs to decide to terminate her pregnancy which was not convenient for many women. Second the act distinguished between married and unmarried women where in case of contraceptive failure a married women is allowed abortion but an unmarried woman is allowed abortion only if it poses a severe risk to her well being or there exists a fetal abnormality. Third, the act required the consent of husband which is in contrast to the autonomy of women.

In *Dr. Mangla Dogra & Others v. Anil Kumar Malhotra & Others*, the court held that

“22. It is a personal right of a woman to give birth to a child, but it is not the right of a husband to compel her wife to give birth to a child for the husband.”

In *Suchitra Srivastava v. Chandigarh Administration*, the “courts affirmed women's right to choose in the context of continuing her pregnancy. They read this as a fundamental right to privacy and bodily integrity as enshrined in the Constitution under Article 21.”

The MTP Act was amended in 2021 and its key features are

1. The **termination of pregnancy may be done up to 20 weeks** in the case of failure of contraceptive method or device regardless of marital status.
2. For the termination of pregnancy up to 20 weeks of gestation only one opinion of Registered Medical Practitioner (RMP) and opinion of two RMPs for termination of pregnancy of 20-24 weeks of gestation is required.
3. The “name and other particulars of a woman whose pregnancy has been terminated shall not be revealed”, except to a person authorised in any law that is currently in force.
4. The upper gestation limit has been increased from 20 to 24 weeks for special categories of women i.e. survivors of rape, victims of incest and differently abled women, minors, among others.

The amendment is a step in right direction but it is full of lacunas as the government has failed to address various concerns faced by women. Moreover, the act do not acknowledge the

autonomy of women. They do not provide an easy access to abortion in government hospitals. No relaxation for women belonging to Economically Backward Class (EBC), who can't afford abortion.

Free practice of abortion rights has been acknowledged by American and Indian judiciary but same have not been granted by the legislature. In both the countries that legislature and the executive have failed to accept and recognize the self-determining right of abortion rights. Women have the right to self determination but they can't practice the same in the current socio and economic scenario due to lack of government intervention.

Conclusion and Suggestions:

Dorothy McBride highlights the lack of participation of women in development of reproductive rights. She enumerates that women are not given due regards in development of abortion laws. After all, it is the women who are at the receiving end and the legislature have continued to fail to incorporate their needs and requirements in the current law. The lack of participation of women also indicates upon the control and dominance of the patriarchal society which they can hardly relate to. Men do not get abortion nor they undergo its repercussion yet they highly feel entitled to make laws on it.

Here, I am not denying the right of a father over the unborn child rather I aim to question their right over the body of a mother. In a bigger picture, I question, what right does patriarchy has to decide over the bodily integrity of a women. It is only when women are part of the discussion and deciding panel, we can understand and improve upon the various issues faced by women. It gives rise to meaningful debates which increases the scope of a fair and just law. For instance, in the above discussion some feminists think of abortion rights to be private law and other consider it as public law in nature. If the right is private, then to what extent? Also, the mother will be depriving the society from a "person" who will be its member.

Women today needs to be educated upon their reproductive rights including abortion rights. This is important so that they could make a conscious and informed decisions. Moreover, I suggest state sponsored counselling sessions for pregnant women. In fact, in a study it was claimed that only 24% woman were content with their decision of getting an abortion. It will ensure that women are able to exercise their right freely. Also, it will give an opportunity to her and if married, their partner, to grieve about the need to have an abortion.

Right to abortion is not a political debate, rather it is a concern of many women. It is a human right that is inaccessible due to technicalities and procedure. It is disappointing that women in India still struggle to avail these rights. To the extent that some of the women are not even aware of this right. I propose that that government should take active participation in enhancement of awareness of women's right and develop campaigns to educate women on their reproductive rights. This will ensure an and strengthen women's autonomy and their ability to make conscious decisions.

COVER STORY

REPRODUCTIVE RIGHTS OF WOMEN IN INDIA

-Aditi Bhardwaj*



Source: Kaiser Health News

Without Roe

As the draft of the Supreme Court's, overturn of Roe vs. Wade spread like fire in the United States of America. This landmark judgement made abortion a constitutional right. Abortion as an argument is not only in the minds of religious leaders and feminists, it has become a political weapon. So naturally, this judgement was a strong president. Since Roe, the Court has repeatedly reaffirmed the Constitution's protection for this essential liberty, which guarantees each individual the right to make personal decisions about family and childbearing.

This created a strong base for the connection between constitutional protection of the right to abortion.

In the recent *Whole Woman's Health v. Hellerstedt* it recognized that without the right to abortion the right to health would be meaningless. Another important case that added another layer was *Planned Parenthood of Southeastern Pennsylvania v. Casey* it talked about how one's belief could not hamper another's right to personhood. In the end, talking about individuality.

**The author is a fourth year law student at Institute of Law, Nirma University. All views are personal.*

The provision that was protecting the woman's right to abortion in all these cases was the fourteenth amendment. Which talks about how a state cannot any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

As Roe vs. Wade gets overturned the interpretation of the fourteenth amendment protects the right to abortion and cases such will come crumbling down. This would open the doors for states to make laws that could hamper women's reproductive rights. However, the court's decision concerning abortion is a draft right now and thus subject to change. In the meantime, it is important to note that even with Roe as a backing the states have already taken up a restrictive approach to abortion. The legislation covered everything from financing restrictions to physician restrictions to patient waiting periods and gestational limits. If Roe v. Wade is overturned, others believe it will result in a complete ban on abortions.

The politics of abortion, however, has been more of a moral one there of course a legal side to it but it runs on legal morality too. The most familiar argument against abortion rests on the claim that the human foetus, or at least the typical human foetus, has a right to life. Proving that the foetus is alive at conception is essential to this argument. As the medical community remains unsure this argument goes into unseen waters of religious morality versus reproductive rights. This is a 'slippery slope argument, the question of when life begins, and medical risks for pregnant women.

There is another argument for women's fertility rates in the United States. According to a 1999 study States legalizing abortion experienced a 4% decline in infertility.

This is often countered with the fact that the research pool of these studies is small and does not take into account other factors. Another factor is that a ban would not stop abortions it will just make it unsafe risking the life of the woman.

Another argument in line with this is the health of the child, an unwanted child will not only have psychological effects but also is likely to be neglected, abused or stuck in cycles of poverty according to the WHO.

The main argument of reproductive rights activists claims that as it the growth in a women's body it should be her right. On the other hand, unlike in other religions, abortion amounts to killing because the foetus is alive on conception.

Therefore it may be a political argument but one should never forget that it makes politicians sway. One should not forget that the USA is building a president for other countries to follow. this could cause ripples of violations of women's reproductive rights around the world.

1) **Pattali Makkal Katchi vs Mayileruperumal**

Tamil Nadu's reservation of Vanniyars in education and employment under the Most Backward Classes category was ruled unlawful by the Supreme Court. The reservation was not justified by empirical data on backwardness, according to the Court. The Constitution (One Hundred and Second Amendment Act) of 2018 delegated to Parliament the power to identify socially and economically disadvantaged groups for employment and education reservations.

The Tamil Nadu Special Reservation of Seats in Educational Institutions, including Private Educational Institutions, and Appointments or Posts in State Services within the Reservation for the Most Backward Classes and Denotified Communities Act, 2021 (The Tamil Nadu Act) was passed on February 26th, 2021. Within the 20% allocation allowed for Most Backward Classes, the Act provides for a 10.5 percent reservation for Vanniyars in public education and employment (MBCs). MBC reservation is not universal between states, with the Tamil Nadu government establishing MBC reservation in 1993.

The Supreme Court's decision in the Maratha Case in May 2021 emphasised that states do not have the authority to identify backward classes and that data on backwardness is required before reservation for a class can be allowed. The Constitution (One Hundred and Fifth Amendment Act), 2021, passed in August of that year, restored the states' right to identify classes for reservation.

The TN Act was challenged in the Madras High Court by people from other MBCs. They asserted that because the Act was passed before the 105th Constitutional Amendment, the State government lacked the authority to pass it. The MBCs further claimed that the Vanniyars' claim of backwardness was based on no empirical data, and that this reservation within the MBC quota discriminated against them. Both arguments were accepted by the High Court, which pronounced the Act illegal.

On December 16th, a Bench consisting of L Nageswara Rao, BR Gavai, and BV Nagarathna JJ admitted a collection of applications seeking to maintain the Act, including those filed by the TN State Government and the Pattali Makkal Katchi. In an interim ruling, the Court halted new appointments to TN State Government positions and admissions to educational institutions until the issue was resolved. Justices Nageswara Rao and B.R. Gavai deemed Tamil Nadu's Vanniyar reservations law illegal in a judgement issued on March 31, 2022. The Supreme Court ruled that, while the State government had the legal authority to give internal reservations, it had erred by framing the 2021 Act with outdated and incorrect data. The Court determined that the 2021 Act discriminates against other MBC groups, who are disadvantaged since they do not have access to such a significant number of reserved seats.

2) Union of India vs. Manju Arora

In the case of Union of India vs. Manju Arora, the Supreme Court of India ruled that any Central Government employee who declines a promotion offer shall not be entitled to a financial upgradation under the O.M. dated 9/8/1999. Under the O.M. dated 9/8/1999, the Ministry of Personnel, Public Grievances and Pensions, Government of India, inaugurated an Assured Career Progression Scheme. Employees who had not received a promotion after 12 years of service were eligible for this reward. It offered such personnel a financial upgrade to the next higher pay grade.

The benefit of the ACP Scheme, according to the Court, would be offered only to those employees who were unable to obtain a regular promotion. The Court went on to say that it wasn't a question of a lack of advancement opportunities, but rather of the employee deciding not to take advantage of them for personal reasons. The Court also stated that the HC failed to take into account this critical information. The Supreme Court further stated that employees' refusal to be promoted causes administrative problems as well as difficulty in filling higher-level positions.

4) State of Andhra Pradesh v. S. Pitchi Reddy

The Supreme court ruled that High Court's impugned judgement and directives quashing and setting aside the new assessment orders are unsustainable. The court also observed that, firstly, the writ petitions contesting the new assessment findings should not have been handled immediately by the High Court. The numerous dealers – assesseees should have taken advantage of the alternative remedy of submitting an appeal with the First Appellate Authority when the earlier assessment orders were issued, which they could have taken advantage of.

Second, because the fresh assessment orders were issued as a result of the First Appellate Authority's remand of the case awaiting the appeal of the remand order, the fresh assessment orders could not have been set aside solely on that basis. New assessments, on the other hand, have gone against the respective dealers in this case. As a result, the respective dealers were forced to file challenges against the new assessment decisions with the First Appellate Authority. In light of the foregoing, the High Court's judgement and judgments quashing and setting aside the additional assessment orders in the writ petitions filed under Article 226 of the Indian Constitution are unsustainable.

5) Om Puri & Ors vs Hindustan Zinc Ltd. & Ors

Applicants in this case complained about Hindustan Zinc Ltd.'s infringement of environmental regulations while mining lead, zinc, and associated minerals in Rajasthan's district Bhilwada. Even if the committee could not conclude with confidence that the corporation is responsible for the damage in its report, NGT said that damage to the groundwater can be inferred from its actions. As a result, corrective action is required, and the corporation must bear the costs and pay compensation in accordance with the guidelines established by the Hon'ble Supreme Court of India. When violators are businesses like Hindustan Zinc Ltd. and victims are an indeterminate number of people distributed throughout more than six Panchayats, the NGT underlined that environmental law infractions cannot be regarded lightly. The National Green Tribunal ordered Hindustan Zinc Ltd. to pay INR 25 crores to cover the cost of remediation measures for violating environmental standards in its mining operations in Rajasthan's district Bhilwada. In addition, the NGT established a joint committee to develop a restoration plan for the area's soil and ground water quality, as well as a health improvement programme for the residents and cattle.

6) Varun Sheokand vs Central Pollution Control Board & Ors.

In this case, the applicant complained about different firms burning e-waste in Sarurpur Industrial Area, Faridabad, Haryana. The NGT has formed a joint committee to look into the applicant's concerns over improper e-waste disposal in Sarurpur Industrial Area, Faridabad, Haryana. The NGT evaluated the applicant's claims as well as the images and concluded that this case raises significant environmental concerns. The NGT has also directed that all State Pollution Control Boards ("SPCBs") and Union Territory Pollution Control Committees ("UTPCCs") forward this order to the Central Pollution Control Board ("CPCB") for filing status reports on the operation of e-waste recycling industries and other polluting categories of industries within one month. CPCB has been asked to hold an online interaction with all SPCBs and UTPCCs and submit a consolidated report to NGT as a result of this.

NEWS & RECENT DEVELOPMENTS

- *Ami Trivedi*

1) How Supreme Court's Recent Judgment Expands Rights of Widows Under Domestic Violence Act?

In the recent judgment of *Prabha Tyagi v. Kamlesh Devi*, the Supreme Court of India has made certain important observations with respect to scope of relief obtainable under the Domestic Violence Act, 2005 as well as the persons entitled to obtain such relief. The court has progressively undertaken to expansively interpret the provisions of the Act so as to provide for a wider protection within the precincts of the social-welfare legislation. With its purposive interpretation of the legislative provisions, the Supreme Court has effectively made space for the rights of the widowed daughters-in-law within remedial functionality of the Act.

2) Rights Of Indian Prisoners to Equitable Wages and Application of Labor Laws in Prisons

India, one of the world's biggest civilized nations, continues to fall behind in codifying the rights of its inmates. India has over 1400 prisons but requires legislation to protect the rights of its prisoners. As a result, such rules are often mentioned only on papers without being implemented in practice. The majority of these jails are maintained by the prisoners themselves. This guarantees that external influence is kept to a minimum and that maintenance expenses are kept to a minimum. The prisoners at the reformatory institution conduct daily activities such as laundry, landscaping the jail yards, cooking, and working in the commissary.

The jail authorities remunerate them based on the job they do. A common follow-up issue is concerning the amount of money provided to inmates for the labor they do and if there is a proper amount that should be paid. Prisoners who are compelled to work without sufficient recompense are considered to be subjected to "forced labour," which violates Article 23 of the Indian Constitution. In the case of *State of Gujarat v. Hon'ble Gujarat High Court*, the Supreme Court expressly specifies that the state may withhold no more than 50% of wages.

3) **Victim Compensation Scheme – A Glimmer of Hope**

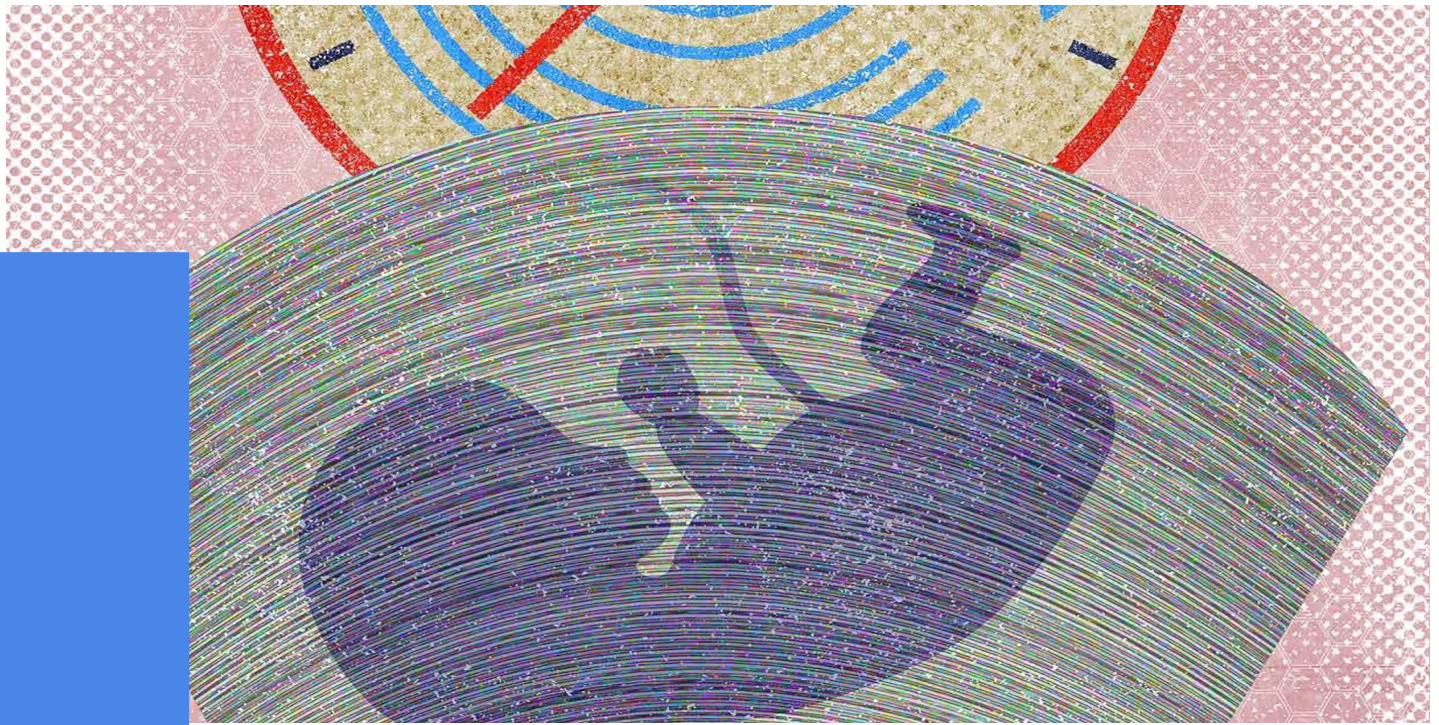
The Victim Compensation Scheme (VCS) under Section 375A of the CrPC obligates the state to prepare a scheme to compensate victims of crime, by collaborating with the Central Government. However, recent shocking data revealed before the Supreme Court in *Re Alarming Rise in Number of Reported Child Incident* case highlights how the scheme has more or less remained ornamental to the CrPC and is rarely fulfilled with no interim or final compensation being awarded in 99 percent of the cases. This article aims to emphasize the responsibility that the state has in enforcing the VCS to achieve the dream of a welfare state as envisioned by the framers of our constitution.

4) **The New Act to Collect Measurements Raises Concern for Juveniles In India**

In the first week of April 2022, the Criminal Procedure (Identification) Bill, 2022 was passed by both Houses of Parliament. The Bill provides for the collection, storage, processing and dissemination of measurements of any person convicted, arrested or detained under any law. The measurements could include fingerprints, footprints, photographs, retina, iris scan, biological samples and their analysis, behavioral attributes, and any examination under Section 53 or 53A of the Code of Criminal Procedure (CrPC). The potential conflict between the Identification Act and the JJ Act which strike at the root of the fundamental principles of JJ Act arises from the provisions related to retention and destruction of records of measurement. The Identification Act creates no exception for juvenile offenders, when it empowers a police officer, of the rank of Head Constable or above, to collect measurements from any person convicted, arrested or detained. However, Rule 14 of the Rules framed under the JJ Act read with Section 3(xiv) and Section 24 of JJ Act enjoins a duty on the Juvenile Justice Board or Children's Court to ensure that all records of conviction of with respect to a CCL shall be kept in safe custody till the expiry of period of appeal or seven years and thereafter destroyed. This creates a conflict and hence must be resolved.

6) "Right To Sanitation Accepted as a Fundamental Right": Patna HC

In a significant observation, the Patna High Court earlier this month underscored that right to sanitation has been virtually accepted as fundamental rights like the right to water, the right to health, the right to healthy environment, the right to education, and the right to dignity directly related to right of sanitation. The bench stressed upon the obligation of the part of the State (all stakeholders) in establishing sufficient facilities for sanitation and personal care on the Highways, be it on the Petrol Pumps or otherwise.



CSJ ILNU MONTHLY BULLETIN

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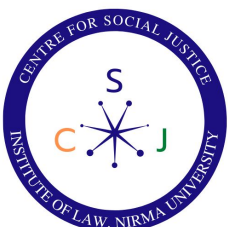
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