

SAFE ABORTION

Abstract

A woman's right to safe and legal abortion constitutes her Reproductive Right, which has been internationally recognised from time and again, emerging as a subset of Human rights. Reproductive Right includes in its ambit the right of access to safe abortion facilities and procedure with addition to post abortion care. Abortion as a medical procedure came up to be sanctioned as legal in major parts of the world in the mid of 20th century. In India, the method of abortion came up to be recognized as a legal practice in the year 1971. Prior to this, abortion was illegal under the penal provision. The liberalization of laws in relation to abortion took place in the year 1971 with the passing of the Medical Termination of Pregnancy Act. The present Act allows abortion within the initial term of pregnancy only on the recommendation of one or more registered medical practitioner on grounds of grave danger to the woman's physical or mental health. Thus legislation governing abortion in India is moderate in its approach. Neither is termination of pregnancy highly restrictive under the statute nor is it available on request. This update is a study into the functioning of the said Act in relation to abortions taking place in the country. The central aim of this update is to make a precise note about the practical scenario of abortion procedures performed in the country and how far it is done in a safe and legal environment.

The Issue:

Every year there are more than 25 million unsafe abortions and 97% of such abortions happen in developing countries.¹ While seven million women in each year in such countries are treated in healthcare centres for complications induced by unsafe abortion, it also accounts for 8 – 15% of maternal death worldwide.² WHO defines unsafe abortion as a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards or both. In spite of reformation on abortion laws around the world, from amendments of criminal codes to adding new statute and waving off the penalties subjected with abortions, unsafe abortions still continue to be a threat to women and their health right around the world. The Guttmacher

¹ Guttmacher Institute

² BJOG:Release



Institute estimated that 55% of the world's abortions each year are safe, 31% are less safe and 14% are least safe. Around 25 million unsafe abortions were estimated to have been taken place worldwide each year, almost all in developing countries out of which 8 million were carried out in the least safe or dangerous conditions.³ In this context statistics in India as of 2015, estimated that about 78% of abortions occur outside of a health facility, and a large majority of such abortions do not meet the criteria for legality.

Unsafe abortion accounts for 8 – 15% of maternal deaths and remains as one of the leading and alarming causes of maternal mortality worldwide.⁴ Almost seven per 1,000 women in developing regions are estimated to be treated annually in health facilities for complications of induced abortion.⁵ Such complications include incomplete abortion, haemorrhage, infection and uterine perforation. Women undergoing unsafe abortions around the world are exposed to such life threatening complications. Globally it is estimated that 6.9 million women in the developing world were treated for complications from unsafe abortion in 2012 and as many as 40% of women who need care do not obtain it, records in India suggest that out of women who reported complication from an induced abortion, 83.3% sought treatment for it⁶.

Access to safe and legal abortion is one of the targets of Sustainable Development Goal. (SDG) Goal 3: Ensure healthy lives and promote well-being for all at all ages, and Goal 5: Achieve gender equality and empower all women and girls, are aimed to provide Universal access to sexual and reproductive health and rights and reduction of global maternal mortality ratio. India having made a commitment to human rights and reproductive rights articulated in various international forums must ensure safe and legal abortion services which are critical to women's health and creating a supportive legal environment is one step in achieving it.

The Impact:

The impact of unsafe abortion is keen. Limiting the reproductive choices has evidently shown unfavourable impact on the status and wellbeing of women. It is widely acknowledged that countries in which abortion is restricted by law, women seek abortions under conditions that are medically unsafe and life threatening. Countries in which abortion is legal and safe abortion services are available, but access to such services are limited due to a significant number of barriers including access to legal abortion under special circumstances, social stigma starting from cultural and social norms to costs and long distance travel to health facilities. Abortion-related stigma prevents women from seeking abortions and the gross underreporting of abortion is one indicator of the magnitude of stigma attached to abortion. These barriers and stigmas lead to marginalization, vulnerability and discrimination of women which persists violations of the right to health and contribute to the shattering number of death and complications witnessed each year due to unsafe abortions.

³ WHO, news: key facts 19.02.2018

⁴ BJOG : Release

⁵ Guttmacher Institute: Report on abortion worldwide, 2017

⁶ NFHS 2015



Denial of abortion based on any ground whatsoever, inaccessibility to standard health care facilities constitutes a grave violation to the Reproductive Right of a woman. Criminal prohibition also forces women to continue unwanted pregnancies. Women having to bear the physical consequences of pregnancy the right of choice of abortion being put on them rather than their counterparts or any cultural and social norms not only victimizes them rather makes them vulnerable to serious health hazards which follows when they are forced to rely on illegal and unsafe methods of termination.

Major Challenges in India:

Despite of the Act being implemented for more than 5 decades it has not been able to curb unsafe abortions to a great extend. The MHFW brought out an integrated approach document for (RMNCH +A) in India in the year 2013 according to which 8% of the maternal death was contributed by abortion. The National Family Health Survey in the year 2015-16 in its report has mentioned that more than one-quarter (26%) of the abortions performed that year, were reportedly performed by the woman herself at home. The last recorded data shows 12,510 number of institutions being approved for MTP work in the year 2007-08 whereas 641,786 abortions were performed in that very year.

Even though the Act covers measures to provide safe and legal abortion, women in India face many barriers in obtaining the same due to the lack of trained professionals, unequal distribution of trained professionals across urban and rural areas. Self-abortions without prescriptions via chemists and informal vendors, lack of awareness of the law, unnecessary spousal consent requirements, informal cost of abortion services acts as hindrance for women seeking abortion in the country. Abortion services are technically free of charge at public facilities, but according to a survey conducted, it was recorded that women in reality, had to incur the cost of the procedure (i.e., for anaesthesia, antibiotics or other medications)⁷. Apart from this, the stigma surrounding abortion in India manipulates women's decision in relation to abortion. As non-marital childbearing is highly stigmatized in the country, it causes mental strain to such unmarried women; helplessly she turns to less safer ways of abortion, opting illegal ways or travelling long distance to undergo termination.

Safe Abortion: Reproductive Right of a Woman:

Safe abortion is a fundamental right of every woman under the prospect of health right. Access to safe and legal abortion respects and shapes reproductive choices of women. According to a survey in places where abortion is legal, safe and accessible, complications from abortions such as incomplete or septic abortion is far less likely, ultimately limiting the suffering and death which it follows⁸. Thus the evidence is compelling that where abortion is legal, it is much more likely to be safe, and where it is illegal it is unsafe. Family planning, which includes safe and legal abortion, empowers women to make voluntary and informed choices about their reproductive health. It has contributed in reducing maternal mortality by delaying pregnancies

⁷ Guttmacher Institute

⁸ Guttmacher Institute



in young women who would have otherwise faced an increased risk of health complications and death from early childbearing. Access to voluntary family planning can reduce maternal deaths by between 25 and 40 per cent.⁹

Apart from this safe abortion has a tremendous benefit to society by ensuring that every child is a wanted child. When there are desired number of children, they are healthier, better educated and turn out to be more economically productive, leading to a reduction in poverty. The right to choose when to have children, if to have children and to decide the spacing between children attributes positively to woman's physical and mental health giving them the time and opportunity to pursue education, establish their career, build livelihood, voluntarily plan a family and prosper. Accessibility to safe abortion is elemental in establishing gender equality and simultaneously empowering women. It strives in giving them equal chances as their counterparts in matters of employment hence they can contribute to socioeconomic benefits whereas denying access to abortion, impair women's capability to make decisions about their bodies and their lives.

Abortion – Legal Perspective in India:

The method of Medical Termination of Pregnancy came up to be recognized as a legal practice in the year 1971. Prior to this, abortion was illegal under the provisions of IPC terming it as “causing miscarriage” and making it punishable for both the woman and the abortionist except to save the life of the woman. The liberalization of laws in relation with the termination of pregnancy in India began in the year 1964 in context of high maternal mortality due to unsafe abortions. After making a careful study of the entire issue and taking a pragmatic approach of the socio-legal problems involved in cases of unwanted pregnancies the government of India eventually passed in the Medical Termination of Pregnancy Act 1971.

When a woman can avail abortion under the provisions of the Act:

- The present Act allows abortion within the first 12 weeks of pregnancy provided a registered medical practitioner is :
Or
- if the foetus is between 12 and 20 weeks old, two medical practitioners are of the opinion that :
 - I. The continuance of the pregnancy would involve a risk a risk to the life of the pregnant woman or grave injury to physical and mental health; or
 - II. There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.
- Section 5 of the Act is an exception to the above rule and it allows abortion where it is necessary to save the life of the woman. In such case if the opinion of two medical practitioners diagnoses immediate danger to the life of the pregnant woman, termination shall be carried out.

⁹ UN Report on SRHR, 2011



Grounds in which abortion is permissible under the Act:

Under the MTP Act, 1971 a woman can legally avail abortion if any of the following grounds exists:

- if the pregnancy carries the risk of grave physical injury
- endangers her mental health
- when pregnancy results from a contraceptive failure in a married woman or
- from rape or
- is likely to result in the birth of a child with physical or mental abnormalities. Such abortion is permitted up to 20 weeks of pregnancy duration and no spousal consent is required.

One of the most significant provision of the Act remarks that it is the pregnant woman who can solely consent for abortion. Similarly, there has been no mention of spousal consent in case of married woman who wants to undergo termination. Thus, the Act has been designed respecting a woman's reproductive right and choices.

Judiciary's Dilemma:

Various advocacy issues have emerged regarding the administration of the MTP Act. Judiciary has tried to address the legal issues in relation with the interpretation of the Act in accordance with its general terms. A majority of such issues are related to the controversy of abortion beyond 20 weeks of pregnancy. High Courts and Supreme Court have witnessed a number of appeals and cases on this dispute in the recent years. The Supreme Court has given variable opinions while approaching cases on argument of abortion beyond 20 weeks. In March 2017 in a certain case¹⁰ the writ petition to undergo abortion on 27th week of pregnancy in support of the doctor's report citing severe physical abnormalities in the foetus was dismissed on the ground that such pregnancy didn't have any physical risk to the mother although it was clear that the foetus if born will not lead a normal life. But the Supreme Court allowed abortion later that year in a similar case¹¹ where the woman was 25 weeks pregnant and the medical report suggested cardiac abnormality of the foetus and the Medical Board categorically revealed that the mother shall suffer mental injury if the pregnancy is continued. Thus it is clear that the Supreme Court holds inconsistent views as in the first case denied abortion having no say about her mental health but in the second case has directed to undergo abortion even though there was no physical harm to the woman in carrying out such pregnancy in its full course.

Major Turning Point leading to Amendment of the Act:

The case of Dr. Nikhil Dattar Vs Union of India played an influential role in the proposed amendment in the Act. Having faced similar cases, where the pregnant woman is denied to undergo abortion beyond the legal timeframe, even though the abnormalities in the foetus is determined after 20 weeks, Dr. Dattar filed a special leave petition before the Supreme Court of India to appeal the decision. The petition argues that the 20-week restriction in the MTP Act violates women's fundamental human rights under the Indian Constitution and as guaranteed

¹⁰ Seetal Shankar Salvi vs Union of India, 2017

¹¹ Sarmistha Chakraborty & anr. vs Union of India Secretary, 2017



by international law. Under the Indian Constitution, the right to life includes both the right to health and the right to a dignified existence. Both of these rights are violated when women are compelled to carry a pregnancy to term that compromises their health and that can severely impact their financial well being and family welfare. The petition seeks an order by the Supreme Court directing the Government of India to revise the MTP Act to permit abortions for foetal impairment throughout pregnancy. This petition was significant in the Amendment Bill of 2014. The bill successfully moved to Rajya Sabha in 2017 to extend the permissible period for abortion from twenty weeks to twenty four weeks under specific circumstances. It has been reasoned by Dr. Kanwar Deep Singh, then member of Upper House of Parliament that during the intervening period after the Act was enforced, several genuine cases have come up where the fact of foetuses with serious risk of abnormalities with grave risk to physical and mental risk to mother had been noticed after twenty weeks. As a result, many women were forced to move the Supreme Court for permission to end pregnancy beyond twenty weeks, leading to lot of mental and financial hardship to such pregnant women.

Abortion Legislation in other countries: Comparative Perspective:

Abortion was legally restricted in almost every country by the end of the nineteenth century. With the advancement of science, surgery techniques, and medicine many countries changed their opinion about the practice of termination of pregnancy. The first country to reform its abortion law was the Soviet Union, in October 1920 making it available on request. India being a part of colonial rule of U.K. and a part of common law has borrowed its laws, legislation on the theory of termination of pregnancy from it. “The Abortion Act” in U.K. was enacted in 1967. Its provisions are parallel with the MTP Act, 1971. The only difference between the legislation of both the countries being the extend of gestation period, Abortion Act provides for is permissible termination up to 24 weeks of pregnancy whereas under MTP Act it is up to 20 weeks.

India is a part of South-Central Asia sub region where unsafe abortion is highest. In comparison to its counter countries like Bangladesh, Myanmar, Sri Lanka, have limited conditions under which a woman can access abortion services, i.e. abortion can be accessed only to save her life. Indonesia is yet to legalize abortion. Maldives permits abortion to save a woman’s life and to preserve her physical health. Thailand follows Indian perspective and allows abortion to save a woman’s life, to preserve her physical/mental health, in case of a foetal impairment or in case of a pregnancy resulting from rape/incest.

Democratic Republic of Korea has made a bold provision and provides abortion up to a gestational age of seven months (28 weeks) on request without any restrictions. The law does not require authorization or certification by doctors for abortion except in cases of complications which could endanger the mother’s health during pregnancy and delivery and similar to MTP Act, only the woman undergoing abortion needs to give her consent for the procedure. In case of minors or the mentally challenged, a guardian can provide consent for the procedure. Parliament of Singapore has approved a new comprehensive abortion law. Abortion decision has been left exclusively between the woman and her doctor. Abortion may now be performed up to the twenty-fourth week of the gestation



CALL FOR ACTION

- ❖ **Legal Reform:** The major criticism relating to abortion legislation in the present framework is the debate of permissible gestation period. The dilemma of the judiciary in various cases and the deep violation of reproductive right of a woman lead to the recommendation for the present amendment bill of MTP Act to extend the permissible gestation period from 20 weeks to 24 weeks. Several genuine cases where the fact of foetuses with serious risk of abnormalities with grave physical and mental risk to mother had been noticed after twenty weeks. Having been supported by The Obstetrics and Gynaecology of India which “recognizes the right of a woman to terminate the pregnancy beyond 20 weeks when there exists a foetal abnormality that is either incompatible with life or would require major medical or surgical intervention to permit survival”. It is therefore suggested that the amendment pending in the Rajya Sabha should be passed as soon as possible.
- ❖ **Trained Personnel:** A considerable number of challenges is faced in seeking proper medical treatment as a result of unskilled and untrained medical personnel. This should be addressed by training and certifying more doctors to provide abortion care. Evidence drawn by the WHO shows that abortion can be safely provided by trained personnel, including non-physicians. According to WHO, training of other cadres of service providers, including mid-level providers, is required to increase the abortion provider base. A study conducted by The Guttmacher Organisation, also suggests for permitting nurses, AYUSH doctors (practitioners of indigenous medicine) and auxiliary nurse midwives to provide Medical method of abortion.
- ❖ **Information about Recognized Health System:** There is an ardent need to display in the conspicuous places, the approved medical institution where abortion can be performed as per Rule No. 4 Explanation 7 of the MTP Act. Web based displaying of information about institution permitted by the Government to perform abortion can be explored for wider public information.
- ❖ **Monitoring Compliance of Standards:** There is an immediate need to bring in place multi level monitoring mechanism to continuously monitor compliance of standards fixed for health institutions who are authorized to perform abortion legally. It is a fact today that most of the institutions do not maintain the prescribed standards in their establishments and lack trained professionals to perform safe abortion. Accountability in the system is vital to prevent omission of duty by public authorities responsible for monitoring and initiating action in case of failure to maintain prescribed standards.
- ❖ **Non – Discrimination:** As according to the provisions of MTP, the pregnant woman is solely given the authority to give consent for abortion and the Act has not distinguished between married and unmarried women, bias towards unmarried single women by any person such as the abortionist, medical staff, nurses etc must be taken seriously and they must be trained to act with sobriety. Similarly unnecessary spousal consent to initiate the abortion procedure should be discouraged and penalized.



- ❖ **Contraceptive Choice:** Spreading awareness and addressing the need of contraceptives is a needful step. As majority of women in India reported rely on abortion for limiting or spacing children, awareness about other contraceptive choices should be given to them. These contraceptive choices must be readily accessible to them.
- ❖ **Regulate Sale of Counter Drugs:** As cited above, self abortion using over the counter drugs has resulted in abortion related complications in such women. Readily available drug without prescription to induce abortion is another string which has emerged in the recent times that needs to be controlled. Drug regulation, monitoring the vendors and pharmacies, inspecting the sale of such drug is a needful step.
- ❖ **Public Awareness:** The taboo attached with the practice of abortion and poor knowledge about the practice being legal and readily available at all public health facilities must be addressed by creating awareness via media, organising camps, gatherings in villages by involving women and girls of reproductive age.

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- 2) Demanding Legal Framework,
- 3) Demanding Enforcement of Laws and
- 4) People's Participation in Implementation of Law and holding Institutions Accountable.

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