

ABORTION TO BE GIVEN AS A RIGHT IN INDIA

“There is no freedom, no equality, no full human dignity and personhood. Possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual.”

India is a country of mixed diversities in unity which is filled with varied culture. Starting from the Kashmir and ending till Kanyakumari our country denotes a different characteristics of culture where some adopt a positive notion about any aspect where others adopt pessimistic attitude. Due to this difference in attitude of people we have our country had always faced great difficulty if it has tried to change any particular aspect which secures a great importance in the society.

In medical terminology, the term abortion refers to two basic phenomena: miscarriage (spontaneous abortion) and induced abortion. In common parlance, the term “abortion” is synonymous with induced abortion. However, in medical texts, the word ‘abortion’ might exclusively refer to, or may also refer to, spontaneous abortion (miscarriage).

Abortion always had many myths right from the ancient history when it was considered the worst step of the mankind resulting an action against the god till the modern age of 21st century when the professional world hardly cares for such steps. Our country being a nation filled with amalgamating religions has always considered abortion a step against the text of holy books hence against god.

Abortion is defined by the Canadian Intermediate Dictionary as “the deliberate ending of a pregnancy by causing the foetus to be expelled from a woman’s womb “Abortion is one of the most controversial ethical issues because it concerns the taking of a human life. Generally, if we look at traditional arguments for and against abortion, we find legal and religious arguments guiding each respectively. When it comes to who favour abortion, they point to the argument that abortion represents a woman’s “right to choose” whether to continue her pregnancy or terminate it. Pro-Lifers, or anti-abortionists, generally make a religious argument as the spearhead of their collective opposition to abortion. Human Rights are those rights which should be available to every individual without any discrimination of any kind. Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom. The most important right of a Human is the right to life. It is the supreme human right from which no derogation is permitted. It is inalienable.

A conflict of rights

The feminist ethics framework views the situation of the pregnant woman considering abortion as part of a social system. A central moral feature of the argument is that pregnancies take place within women’s bodies and have profound effects on their lives. The other central argument is grounded in women’s status – their social and family roles and responsibilities, their secondary status in most spheres of activity and male-centred work cultures and employment policies.

Within this framework, it argues, women should be judge of whether abortion is an appropriate response to a pregnancy. It is inappropriate to lay down abstract rules for when a decision to abort or not is “right”: Woman’s deliberations will involve considerations of their commitments to the needs and interests of everyone concerned, including the foetus. Women should be considered the full moral agents, responsible for making moral decisions. Women must have the freedom and the authority to control their reproduction, free of male dominance and oppressive conditions of poverty and subordination.

This argument might seem to fall within the libertarian framework which holds individual rights sacred. However, it is based on an analysis of empirical realities recognising the ‘individual in relationships’ rather

than the 'individual in isolation: It appeal is not so much to the woman's right to bodily integrity, privacy and pursuit of happiness. It is based on two fundamental principles: human beings have "the right to a full human life and to whatever means are necessary to achieve this"; and "decisions should be made by those, and only by those, who are importantly affected by them." Since it is the woman who will probably be responsible for rearing the infant to adulthood if it is born, the decision to have or not have the baby must be hers.

Further, the approach to abortion must address women's reproductive needs to balance the systematic oppression they face because of gender, race, class and ethnicity. For example, women from poorer families are much more affected by the lack of access to abortion. Thus, the two reinterpreted principles – the notion of a 'relational' autonomy and a redistributive justice – and the feminist perspective of 'personhood' together justify women's rights to abortion from the ethics point of view.

The Article 21 of the Indian Constitution provide right to life and right to privacy and The Article 6(1) of the International Covenant on Civil and Political Rights prohibit the arbitrary deprivation of life. But there are some controversial issues related to this supreme right. One such issue is the question of Right of Abortion. Among other rights of women, it is believed that every mother has a right to abortion, it is a universal right. But the rights of the mother are to be balanced with the rights of the unborn. Earlier the right to abortion was not permitted and it was strongly opposed by the society. The termination of pregnancy was termed to be a murder of the foetus. But due to the change in time and technology, nowadays this right has been legally sanctioned by most of the nations after the famous decision of Roe v. Wade by the US Supreme Court in this case the Court held that a mother may abort her pregnancy for any reason, up until the "point at which the foetus becomes 'viable.'" But the oppositions are still present and people do believe that it should be legally prohibited.

Many scholars say Abortion is destruction of life of mother as well as unborn child. According to me, Abortion is an issue of women, and so it should be the woman's right to choose. She has the free will to consider others views and opinions such as that of the father, but it is her ultimate decision which should be guaranteed by the law. A woman's body is hers and hers alone nobody has the right to make her do something that she does not want to.

The Indian Perspective about abortion

In the beginning India was against abortion as rest of the world because Abortion is severely condemned in Vedic, Upanishad, the later puranic (old) and smriti literature. At last India has legalized abortion in 1971 with certain restriction. Indian law allows only such abortion which is due to the continuance of pregnancy which involves a risk to the life of the pregnant woman or grave injury to her physical or mental health. But according to me the law is made for the name sake because the Indian law on abortion will not protect the health of mother whose problem is difficult to recognize within the time period mentioned in the law. India was a pioneer in legalizing induced abortion, or Medical Termination of Pregnancy (MTP) in 1971.

Yet after decades, morbidity and morality due to unsafe abortion remain a serious problem. There is little public debate on the issue despite several national campaigns on safe motherhood. Instead, discussion on abortion has mainly centered on declining sex ratio, sex-selective abortion and the proliferation of abortion clinics in urban areas. Adding to the problem is that abortion continues to be a sensitive, private matter, often with ethical/moral/religious connotations that sets it apart from other reproductive health-seeking behaviour.

Current law and policy: what is still missing?

The MTP Bill was passed by both the houses of the parliament and received the assent of the President of India on 10th August, 1971. It came on the Statute Book as the “The MTP Act, 1971”. This law guarantee the Right of Women in India to terminate an unintended pregnancy by a registered medical practitioner in a hospital established or maintained by the Government or a place being approved for the purpose of this Act by the Government. Not all pregnancies could be terminated.

Section 3 of the MTP Act said that pregnancy can be terminated if:

- Therapeutic indication: in order to prevent injury to the physical or mental health of the woman.
- Eugenic indication: in view of the substantial risk that if child were born, it would suffer from such physical or mental abnormalities as to seriously handicap.
- Humanitarian indication: as the pregnancy is alleged by a pregnant woman to have been caused by rape.
- Social indication: as the pregnancy has occurred as result of failure of any contraceptive device or method used by married woman or her husband for the purpose of limiting the number of children.
- The continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman.
- The termination of pregnancy is to be carried out in a government hospital or at a place approved by the government and two medical practitioners are necessary if the pregnancy is more than 12 weeks but less than 20 weeks duration; for less than 12 weeks one medical practitioner can terminate it.
- The consent of woman alone is required if she above 18 year of age, but if she is a minor or lunatic, consent of the guardian is necessary.

Section 312 of the Indian Penal Code read with the MTPA,1971 where all the restrictions imposed therein, including the time limit of 20 weeks, other than the ones to ensure good medical conditions, infringe the right to abortion and the right to health, which emanate from right to life as guaranteed by Article 21 of the Constitution and also violates her liberty and happiness. The Supreme Court of India has said that the right to privacy is implicit in Article of the Constitution and a right to abortion can be read from this right.

A major criticism of the MTP Act is its strong medical bias. The “physicians only” policy for providers excludes mid-level health providers and practitioners of alternative systems of medicine. The requirement of a second medical opinion for a second trimester abortion further restricts access, especially in rural areas.

The MTP Act mandates the State to provide abortion services at all public hospitals. However, the lack of required approval for public health facilities exempts the public sector from the same regulatory processes that apply to the private sector. The assumption that a health institution by virtue of being in the public sector is accountable to the public, and has well-functioning regulatory processes that do not need explication in law and policy, is not correct. Often, any such regulations tend to be defunct or lack transparency. In the context of poor quality abortion care in the public sector, the same exacting standards should be applied as in the private sector and subject to the same audit procedures that are expected of the private sector. Ironically, however, the private sector in India also remains vastly unregulated and often lacks the self-discipline necessary to adhere to the quality standards specified in the law.

A major gap in abortion policy in India is the lack of explicit policy on good clinical practice and research. Abortion law is always open to differing interpretations and though the present socio-political environment allows a more liberal interpretation in most cases, there is always the theoretical danger of more restrictive interpretations under different socio-political and demographic compulsions, without a single word of the text of the law being altered. Even today, although Section 3 of the 1971 Act does not deny abortion care to unmarried or separated women or widows, the use of the phrase “Where any pregnancy occurs as a result of failure of any device or method used by any “ married woman or her husband for the purpose of limiting the number of children...” may be misconstrued to deny abortion services to unmarried women or require a married woman’s husband’s consent. Though activists have argued for replacing “married woman” with “all women”, this recommendation has not yet been taken up by the Government, as it would imply tacit recognition and sanction of sexual relations among those who are unmarried or were previously married.

Another area of potential abuse of woman’s reproductive rights is the mandatory reporting of post-abortion contraceptive use required by MTP regulations (Form 2), which the State may use to compel abortion providers to achieve family planning targets. Such monitoring often results in a form of coercion of women seeking abortion, especially in the public sector.

Current status of abortion in India

Every year 6.7 million abortions take place in India but the sad part is that 5.7 millions are illegal. The place and technique used in most of the illegal cases are unsafe and unhygienic. “The result is obvious – India has a steep maternal mortality rate of 498 per 100,000 women, which is very high as compared to other countries”

We are following 38 year old law of abortion which prohibits abortion after 20 weeks, unless under exceptional circumstances such as a threat to the mother’s life. The time limit of twenty weeks may be crossed only when the procedure is performed to save the life of the woman. Many countries like Canada, Korea, China, Germany, France and several other European countries have comparatively liberal laws on abortion. Canada goes to the extent of not interfering with the issue at all and leaves it entirely to the woman and her physician.

Why abortion should be legal

- Abortion is about allowing woman the right to make choices about when they want to have children in relation to their age, financial is subject to personal interpretation so should not be legislated against. Those see it morally allowable to do abortion should be provided with the means to do so & those who don't believe in abortion should have the choice not to have an abortion.
- Raising a child is not an easy task & requires social & emotional commitment coupled with financial resources. As such if a person feels they are not ready for a child, it means the pregnancy is unwanted & resultant allowing a foetus to grow into a child is worse than abortion since the resultant child will grow in a non conducive & destructive environment without the love, care & stability that a child needs.
- The argument against abortion is a moral argument which cannot be equated to murder or taking a life since the foetus is not a person nor alive.
- A foetus is not legally or scientifically a person or human being so abortion stability & relationship stability. It is the not the place of government to legislate against woman's choices.

- Prohibiting abortions doesn't stop abortions, women would simply seek abortions via illegal means which are unsafe & illegal, so it is better to provide woman with safe & legal ways to do an abortion.
- Making abortion illegal is also a class struggle since the rich can always go to other places where it is legal & have an abortion whilst the poor cannot do this, but have to resort to unsafe abortions which can lead to their death.
- A woman's right to choose abortion is a "fundamental right".
- Access to legal, professionally-performed abortions reduces injury and death caused by unsafe, illegal abortions.
- Access to abortion is necessary because contraceptives are not always readily available. Women need a doctor's prescription to obtain many birth control methods, such as the pill, the patch, the shot, and the diaphragm
- Many women who choose abortion don't have the financial resources to support a child.
- Motherhood must never be a punishment for having sexual intercourse.
- Abortion reduces crime. Teenage girls, unmarried women, and poor women are more likely to have unintended pregnancies, and since unwanted babies are often raised in poverty, their chances of leading criminal lives in adulthood are increased.
- Do we have the right to force the mother to keep the baby solely because she consented to participate in these sexual activities? Do we have the right to take away another's right as we continue to fight for other rights? Why do we take away the rights of a woman because she has the potential to have a baby?
- We get right to life, liberty & pursuit of happiness when we are born. The foetus does not have these rights until it is born. So abortion is not murder & abortion does not go against the rights of a foetus since it does not have any until born.
- If someone needs something donated that you have, you are not legally obligated to donate anything. This parallels to pregnancies because a foetus does need these resources, but the mother is not legally obligated to keep giving this baby her resources. Denying to give someone a body part is not illegal, so terminating a pregnancy should not be illegal.
- Legal abortions protect women's health. Legal abortion not only protects women's lives, it also protects their health. For tens of thousands of women with heart disease, kidney disease, severe hypertension, sickle-cell anaemia and severe diabetes, and other illnesses that can be life-threatening, the availability of legal abortion has helped avert serious medical complications that could have resulted from childbirth. Before legal abortion, such women's choices were limited to dangerous illegal abortion or dangerous childbirth.
- Even when precautions are taken, accidents can and do happen. For some families, this is not a problem. But for others, such an event can be catastrophic. An unintended pregnancy can increase tensions, disrupt stability, and push people below the line of economic survival. Family planning is the answer. All options must be open.

Abortion law and policy: the way ahead

Many of their recommendations are in line with the objectives and the strategies outlined in the Action Plan of India's National Population Policy, 2000. They include:

•	increasing availability and access to safe abortion services,
•	creating more qualified providers (including mid-level providers) and facilities, especially in rural areas
•	simplifying the certification process,
•	de-linking clinic and provider certification,
•	linking policy with technology and research and good clinical practice,
•	applying uniform standards for both the private and public sectors, and
•	ensuring quality of abortion care.

Increasing awareness and dispelling misconceptions about the abortion law amongst providers and policymakers is just one step towards this. There is a need to enhance awareness of both contraceptive and abortion services, especially amongst adolescents, within the larger context of sexual and reproductive health, integrating strategies and interventions within value systems and family and gender relations-S.Hirve.

For these policies to be implemented effectively, they need to be backed by political will and commitment in terms of adequate resource allocation, training and infrastructure support, accompanied by social inputs based on women's needs. Advocacy and action at both central and state level are required to put the operational strategies relevant to abortion, as detailed in the National Population Policy, 2000 into effect.

Conclusion

Well as I have discussed above there is seriously a need to give women the right to abortion, not because it is Human Right or it has been laid down in our constitution that every individual has a right to life and liberty but because as an individual it is one's own personal life, every individual male or female have a right to take their own decisions regarding their health, life and liberty.

The legal regulations have abrogated the women's right to liberty to a great extent, particularly with respect to right to self determination, right to have control over her body and right to abortion. These regulations have created serious inroads into a women's right to life and liberty and it has become nothing more than an illusion. It is, therefore, submitted that females should be given right to have control over their body and consequently right to have or not to have a child. The right to abortion should be liberally granted to the women at least up to the 12 weeks of pregnancy unconditionally. Abortion should be part of a country's contraception policy. People should plan their families & society must allow women to end unwanted pregnancies, in order to deal with failures of birth control. Under the MTP Act should also be removed. It is pertinent to mention here that private sector is a major source of health services in Indian and excessive regulation over them induces it not to get registered and hence either abortion is done through. Abortion should be legal but discouraged, simply because it is a choice, and what grows inside your body is yours.

But discouraged because there are other more effective ways to prevent pregnancy than abortion like contraception.

Furthermore, in spite of ban on pre-natal diagnostic techniques, little progress has been achieved so far. It suggest, therefore, that the implementation of the Act is very poor and that the law lacks social acceptability and no law can work successfully unless it has the social acceptability behind it. The State should, instead of framing regulatory measures on abortion should concentrate in raising the status of women in society especially in the rural India and towards this end special efforts are needed for the education of women.

