Introduction

According to Oxford Dictionaries abortion means "The deliberate termination of a human pregnancy, most often performed during the first 28 weeks [1]" According to Cambridge Dictionaries abortion means "the intentional ending of a pregnancy"[2] According to Your Dictionary abortion means " The definition of abortion is when a pregnancy ends abruptly, either voluntarily or involuntarily, and the fetus is expelled from the womb before it can live on its own".[3] Thus, from the above definition we find that abortion means termination of early pregnancy mostly three months from the date of conceived, because during this time period the fetus if born can't be survive.

Reproductive Rights

"Reproductive rights are the rights of individuals to decide whether to reproduce and have reproductive health. This may include an individual's right to plan a family, terminate a pregnancy, use contraceptives, learn about sex education in public schools, and gain access to reproductive health service".[4]

Even Universal Declaration of Human Rights 1948 considered Reproductive Rights as one of the basic Human Rights. Even according to Para 7.3 of the International Conference on Population and Development (ICPD) 1994,[5]"Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents"

[1] Abortion, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/definition/english/abortion.
[2] Abortion , CAMBRIDGE DICTIONARY, http://dictionary.cambridge.org/dictionary/english/abortion.
[3] Abortion , YOUR DICTIONARY , http://www.yourdictionary.com/abortion.
[4] What are Reproductive Rights?, FINDLAW, http://family.findlaw.com/reproductive-rights/what-are-reproductive-rights-.html.

[5] Reproductive Rights are human Rights, 5, center for reproductive rights, http://www.reproductiverights.org/sites/crr.civicactions.n et/files/documents/RRareHR_final.pdf.

Likewise, Beijing Declaration, Fourth World Conference on Women "The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment" [6]

In many International Conventions, Reproductive rights is considered to be as one of the basic human right which is included under Right to Privacy of Fundamental Rights. Where a women has a Right for safe Abortion under Reproductive health not only abortion rights but right to decide number of child, spacing between the child etc. is also included in Reproductive Rights. Also, in country like UK and Singapore abortion is allowed up to 24 weeks.[7]But in India, abortion is allowed up to 20th weeks.

It was after the Maneka Gandhi case when Article 21 was elaborately discussed. Right to Abortion was considered as a part of Right to Privacy and included under Article 21 of the Constitution of India. But biasness is there. As only rape victim and married lady were allowed to have safe abortion under MTP Act. The Act is silent about the right of the Unmarried lady, divorcee and Widow. Even married lady had to show or proved that there was a failure of contraceptive and because of which she get pregnant. Then, in such situation where is the privacy of Indian Women, when she has to answer so many questions before availing the service ofsafe legal abortion under MTP Act, 1971. Moreover, Indian women are not that lucky like women in European countries who enjoyed their Reproductive rights with full freedom. Or we can say that Indian society and Government does not want to give this right to the women of our country as still our country is patriarchal society or male dominating society, where every decision is to be taken by the male member of the society.

"No woman can call herself free who does not own and control her body. No woman can call herself free until she can choose consciously whether she will or will not be a mother."[8] *- Margaret Sanger*

[6] Fourth World Conference on Women, UN WOMEN, https://www.nls.ac.in/students/SBR/issues/vol181/18105.
[7] Tanya Manglik, THE LADIES FINGER.
[8] The History of Women's Reproductive Rights.

Abortion is mainly divided into two types-

1) **Spontaneous Abortion** – Is a kind of abortion which occurs during pregnancy due to any complication and it is also known as miscarriages.
2) **Induced abortion** has also been divided into two types:

i. Therapeutic abortion – From its name it is clear that when abortion is done for the protection of the mother life or when child is suffering from some severe health problem like Hydrocephalus(brain not developed) it is known as Therapeutic abortion.
ii. Elective abortion – An abortion induced for any other reason is known as elective abortion.

Before Medical Termination of Pregnancy Act, 1971, the law relating to Abortion was dealt under section 312 to 316 of Indian Penal Code, where abortion done with or without consent of the women was punishable offence except, if it is done for the protection of mother life and in no other circumstances' abortion was allowed.

According to section 312 of Indian Penal Code , Abortion means,' Whoever voluntarily causes a woman with child to miscarry shall, if miscarriage be not carried in good faith for the purposes of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both, and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine" [9]

Thus, under Indian Penal Code, no women can claim abortion as a matter of Right. Only therapeutic abortion was allowed. And because of which mortality rate of the mother has increased during that time due to illegal and unsafe abortion. So, to control the illegal abortion new law relating to abortion was introduced i.e., Medical Termination of Pregnancy Act, 1971. Section 3 of the Medical Termination of Pregnancy Act, laid down the grounds where abortion can be performed.

[9] K.D. Gaur, Textbook On The Indian Penal Code,559 ,4th.ed., 2009

TECHNOLOGY & METHOD OF ABORTION:

Manual Vacuum Aspiration (MVA)

Manual Vacuum Aspiration is a "safe and effective method of abortion that involves evacuation of the uterine contents by the use of a hand-held plastic aspirator", which is "associated with less blood loss, shorter hospital stays and a reduced need for anesthetic drugs". This method of abortion is recommended by the WHO for early termination of pregnancy.

Electric Vacuum Aspiration (EVA)

The Electric Vacuum Aspiration is similar to the MVA insofar as it involves a suction method, but the former uses an electric pump to create suction instead of a manual pump.

Medical Methods of Abortion (MMA)

The Medical Methods of Abortion is a method of termination of pregnancy by drugs. It is a "non-invasive method of ending an unwanted pregnancy that women can use in a range of settings, and often in their own homes". The two drugs approved for use in India are Mifepristone and Misoprostol.

Mifepristone: Progesterone is a hormone required for the growth of the fetus. This drug has anti – progesterone action so it stops the growth of the fetus. The process of medical abortion is started with this drug.

Misoprostol- This drug is used to induce softening of the cervix so that it is dilated easily. It also produces uterine contractions. Due to cervical softening and contraction of the uterine muscles, it helps to expel the contents from the uterus.

In India, use of these drugs (Mifepristone and Misoprostol) for termination of pregnancy is approved up to nine weeks. This method can increase access to safe abortion services for women since it allows providers to offer CAC services where MVA or other abortion methods are not feasible.

Dilation and Curettage (D&C)

The only abortion technique available when abortion was decriminalized in India in 1971 was the Dilation and Curettage method. This dated method is an invasive medical procedure which requires "the use of anesthesia for removing products of conception using a metal curette", often running the risk of hemorrhage or uterine infections.

Position of Abortion Law in India :

Abortion in India is legal only up to twenty weeks of pregnancy under specific conditions and situations, which are broadly defined as:

- The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury of physical or mental health, or
- 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.

Abortion laws in India were introduced in order to curb the issue of overpopulation. Unlike most of the western countries, they weren't a result of a feminist struggle. Abortion became an issue for feminists in early 1980s due to an alarming rise in abortion of female fetuses. India is one of the few countries where abortion related legislative reforms were brought about without any opposition and without any influence from pro-life, pro-choice groups. Chandrasekhar argues that though Hindu texts condemn abortion, the state did not experience the same religious struggle, as seen in the U.S., because the pressing issue of over-population outweighed religious arguments. Despite of the existence of major religions which explicitly oppose abortion, the reforms did not experience any kind of public outcry.[10]

In pursuance of the recommendations of a UN mission in 1965, India appointed Shantilal Shah Committee on 29th September, 1964 to study and make recommendation on the issue of abortion. In light of growing illegal and unsafe abortions, the committee recommended legalization of

[10] Laura S Hussey. Is Welfare Pro-life? Assistance Programs, Abortion, and the Moderating Role of States", Social Service Review. 2011; 85(1):75-107.

abortion. The committee felt that if reforms are made only with the aim of family planning, it may fail to achieve the desired results.[11] They were in complete denial of family planning as a goal behind the reforms. The committee played smart and focused on women's health and access to safe abortion.

Commenting on the hidden goal of population control, Savitri Shyam stated that failure of contraception as a ground for abortion can be justified only in context of population control.[12] Pro-choice advocates in the Parliament like Nand Kishore Singh and Vikram Chand Mahajan[13] felt that the Parliament should make abortion available to every woman who wishes to exercise the right irrespective of the reason. Even though the bill did not permit abortion on social reasons, Lakshitantamma supported the bill on the ground that it is the only remedy available with a pregnant unmarried woman to avoid social stigma. Apart from two MPs who opposed the bill on the ground that it amounts to murder, the pro-life debate did not even once crop up once. The MTP act was passed smoothly without any opposition or public outcry.

In accordance with the recommendations of the committee, The Medical Termination of Pregnancy (MTP) Act, which was enacted by the Indian Parliament in the year 1971 with the intention of reducing the incidence of illegal abortion and consequent maternal mortality and morbidity.

The MTP Act came into effect from 1 April 1972 and was amended in the years 1975 and 2002. The preamble of the Medical Termination of Pregnancy Act, 1971 read as follows- "An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto" [14]

Preamble clearly indicates the objective of the MTP Act. That only certain pregnancy will be allowed to terminate under MTP Act by the registered medical practitioners i.e under the:

Section 3 of MTP Act:- When Pregnancies may be terminated by registered medical practitioners.- Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a

[11] *Ibid*, at. 100.

[12] Malini Karkal Indian Family Planning Programme. A Historical Perspective Undated, Unpublished. On file with Jagori Women's Resource Centre, Delhi.

[13] Lok Sabha Debates, Fifth Series, 7, 160-62.

[14] The Medical Termination Of Pregnancy Act, 1971, http://tcw.nic.in/Acts/MTP- Act-1971.pdf.

registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act. Subject to the provisions of sub-section (4) a pregnancy may be terminated by a registered medical practitioner,-

(a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith, that,-

- The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury physical or mental health ; or

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. Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.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, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(c) Save as otherwise provided in C1. (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

The main objective of the act is:

1. To help unfortunate women who are victims of forcible sexual acts
2. To help women who become pregnant as a result of failed contraception.
3. To reduce the risk of crippled children (eugenic) [15]
4. To help Women who's physical and/or mental health were endangered by the pregnancy
5. Women facing the birth of a potentially handicapped or malformed child. [16]
6. To manage Pregnancies in "lunatics" with the consent of a guardian.
7. To mitigate Pregnancies that are a result of failure in sterilization.s

ABORTION LAW REFORM SINCE 2000: : India has committed itself to safeguarding human and reproductive rights articulated in various international forums.[17]After a long consultative process involving various governmental and non-governmental agencies, professional bodies and activists the Indian Parliament enacted the Medical Termination of Pregnancy (Amendment) Act 2002 and amended Rules and Regulations 2003.[18]

In an effort to reduce the bureaucracy for obtaining approval of facilities, the new Act decentralized regulation of abortion facilities from the State level to District Committees that are empowered to approve and regulate abortion facilities. It also provides punitive measures of 2- 7 years imprisonment for individual providers and owners of facilities not approved by or maintained by the Government. To reduce administrative delays, the amended MTP Rules[19] define a time frame for registration and mandate the District Committee to inspect a facility within two months of receiving an application for registration and process the approval within

[15] Nivedita Menon, Recovering Subversion: Feminist Politics beyond the Law, University of Illinois Press, Chicago, 2004, 71.

[16] D Paul Sullins. Catholic/Protestant Trends on Abortion: Convergence and Polarit, Journal for the Scientific Study of Religion. 1999; 38(3):354-36.

[17]United Nations. Report of the International Conference on Population and Development, Cairo, 5-13 September 1994. 1995; UN: New York.

[18]Government of India. Medical Termination of Pregnancy (Amendment) Act [No.64 of 2002]. 2002; Ministry of Health and Family Welfare: New Delhi.

[19] Government of India. Medical Termination of Pregnancy Rules and Regulations. Vide GSR 485(E) and 486(E). 2003; Gazette of India: New Delhi.

the next two months if no deficiencies are found, or within two months after rectification of any noted deficiency. However, the amended MTP Rules do not specify measures to be taken if approval procedures are still not completed in the stipulated time frame.

While physical standards for a facility providing second trimester abortions remain the same (operating table, abdominal or gynecological surgery equipment, Boyle's apparatus for general anesthesia, autoclave, drugs and supplies for emergency resuscitation) the amended MTP Rules rationalize the physical standards required for first trimester abortions. Facilities are no longer required to have on-site capability of managing emergency complications. However, every facility needs to have personnel trained to recognize complications and provide or be able to refer women to facilities capable of emergency care.

The amended MTP Rules also recognize medical abortion methods and allow a registered medical practitioner (e.g., the family physician) to provide mifepristone + misoprostol in a clinic setting to terminate a pregnancy up to seven weeks, provided that the doctor has either on-site capability or access to a facility capable of performing surgical abortion in the event of a failed or incomplete medical abortion. However, the Drug Controller of India has approved mifepristone provision only by a gynecologist, thus effectively restricting access to women in urban areas. National consensus guidelines and protocols[20] for medical abortion are currently being developed.

In a nutshell under the MTP Act, the right to abortion was made available at the discretion of medical practitioners. Permission is granted if the pregnant woman succeeds in satisfying him that the conditions for abortion given in the act are met.[21] Termination during the first 12 weeks requires a certificate by one registered gynecologist or obstetrician. From 12 to 20 weeks, termination is permitted only if there is risk to the life of the pregnant woman or if it would cause grave injury to her physical and mental health, or alternatively, that there is a substantial risk that a seriously handicapped child would be born.

[20] Government of India. Consortium for National Consensus for Medical Abortion in India: Proceedings and Recommendations. March 2003.

[21] *Ibid*, at, 177.

Termination during this period required certification from two registered gynecologists or obstetricians. Immediate necessity to save the life of the pregnant woman permits termination after 20 weeks with the certification of two registered gynecologists or obstetricians. Contraceptive failure in case of a married woman and rape are covered within the ambit of injury to mental health as per the explanations under the act.

Challenges Of New Technology : Pre-Natal Sex-Determination

New reproductive technologies have combined with patriarchal attitudes to take woman-hatred to new depths. Techniques like ultrasound, amniocentesis, and chorion villi biopsy developed to detect abnormalities in the fetus have, in India, been largely (mis)used to detect the sex of a fetus, and abort it if it is female. Pre-natal sex-determination tests have become enormously profitable, making full capital of the obsession for sons in our society. In addition to this grave violence against the female, the implications of sex-determination followed by abortion of female fetuses can already be seen at the macro level. Demographic imbalances have been heightened, affecting sex-ratios in the national population which has declined from 972 females per 1000 males in 1901 to 927 per 1000 males in 1991.

Sex-selective abortion pre-natal diagnostic techniques like Medical Ultrasonography are capable of determining the sex of the fetus. In many parts of India, daughters are not preferred and hence sex-selective abortion is commonly practiced, a form of Gendercide, resulting in an unnatural male to female population sex ratio due to millions of developing girls being terminated before birth. It can be seen that wide discretionary powers are given to the medical practitioners thus making the act susceptible to misuse. The decision to abort ultimately rests with medical professionals instead of the pregnant woman.

On the issue of liberal interpretation, Jesani and Iyer point out that the act is prone to liberal interpretation which may lead to imposition of extraneous restrictions in the future. Legalization of abortion has resulted in imposition of regulations which have proved to be detrimental to the free exercise of freedom of choice. Pro-choice groups are of the opinion that advocating the need for new laws may turn to be counterproductive. New laws would further categories, concretize

and regulate behavior.[22] Clearly, the larger plan of the state in implementation of the MTP Act was to achieve population control. Family planning, protection and emancipation of women were mere instruments used to avoid hurdles in the implementation of this act.[23]

Women's groups all over the country have been protesting since the early 1980s when these tests first became available and forced the public to think about this issue. They challenged the myth that only sons take care of parents in their old age, by highlighting how much of that responsibility falls on the shoulders of daughters and daughters-in-law. They simultaneously held that state policies must be reoriented so that female children are not liabilities. Equal opportunities, and an adequate social security system would also go a long way in remedying the situation.

One of the major planks of the campaign was legislation to curb the proliferation and misuse of sex-determination tests. Maharashtra was the first state to enact a law in 1986. A country-wide campaign for a central law resulted in legislation finally being passed in 1997. Despite pressure from women's groups, the law remains full of loopholes, and is almost impossible to implement.

The nexus of a strong lobby of commercial interests and the desultory functioning of the Vigilance Committees set up under the Act, and the fact that women undergoing these tests are also liable to punishment, has resulted in a situation where no one is willing to report violation of the law.

In the matter of sex selective abortion, it has been crucial for the women's movement to distinguish itself from the orthodox moral right which is anti-abortion per se. While fighting for women's right to abortion, we maintain that sex-selective abortion is an act of violence against the female gender. The proponents of these measures make no efforts to change the material conditions in society which result in females being an 'unwanted species.

[22] Amar Jesani, Aditi Iyer. Women and Abortion, Economic and Political Weekly. 1993 28, (46, 47).

[23] *Ibid* at. 2591-2594.

Sex-selective abortion has thrown up a challenge to the concept of reproductive rights itself. Proponents of sex-determination assert that women have a 'right' to undergo these tests and also abort an unwanted female fetus. Yet, in a society obsessed with the need to produce sons, with harsh consequences for women who 'fail' to do so, sex-determination followed by selective abortion can hardly be looked upon a free 'choice' that women exercise. Loss of status within the family, traumatized by taunts, beating, and even being thrown out of the house are direct consequences of not producing a son. It is not surprising then, that women 'voluntarily' choose to undergo sex-determination tests.

Criminalizing of sex-determination is not the sole step that will stop this form of violence against women. While making it illegal does remove social sanction from the practice, deeper changes are necessary to ensure that women are not devalued. Discriminatory inheritance laws, limited educational and job opportunities, family, community and caste structures that perpetuate the secondary status of women all have to change.

A Delhi High Court judgement in 1983 held that abortion without the consent of the husband constitutes "cruelty" within the meaning of the Hindu Marriage Act. The husband was therefore granted divorce as, in the words of the judgement, the wife had refused to "satisfy a husband's natural and legitimate craving to have a child." The judgement goes on, "This is more so… where the parties to the litigation are Hindus. In this sort of case the court has to attach due weight to the general principle underlying the Hindu law of marriage and son ship and the principle of spiritual benefit of having a son."[24]

Therefore, the pro-life effect of religious groups is inherent in the implementation of the act, the need of the hour is to sensitize the judiciary. When every petty decision of a woman's life is subjected to the consent of her husband, family and society, it is very difficult for her to exercise control over her womb.

[24] Nivedita Menon, Recovering Subversion: Feminist Politics beyond the Law, University of Illinois Press, Chicago, 2004, 93-94.

Test Conducted During Pregnancy

Following are the test which is conducted during the pregnancy for finding any abnormalities in fetus as told by Dr. Nehha V Motghare during her interview with me –

- Double Marker Test- 10-13 weeks
- Triple Marker Test- 18-20 weeks
- Anomaly Scan- 20 weeks

Most of this test is conducted during 20th weeks of pregnancy for proper diagnosis and result. And after the diagnosis some time treatment is also given to cure the abnormalities in unborn fetus. But not in all cases the result is positive. So, in such cases the woman is forced to carry pregnancy unwillingly and forcefully. There, is no means to keep Section 3.2.(ii) in MTP Act as in reality or practically it is not applicable in actual life when it is needed as in the case of **Dr. Nikhil D. Datar v. Union of India& Ors** [25]

Facts of the case: In her 20th week of pregnancy, Nikkita Mehta's sonography showed her fetus to be normal. However, in the 22nd week, the gynecologist found that the fetus had a congenital complete heart block which would lead to a poor quality of life and could be fatal. Because the condition of Mrs. Mehta's fetus was not discovered until the 22nd week of her pregnancy, she sought permission to terminate the pregnancy from the Bombay High Court. The Court refused to allow an abortion and Mrs. Mehta was forced to continue with her pregnancy. She ultimately had a miscarriage after months of grief and agony and at risk to her own personal health and safety.

Common Health Problem of Foetus - (As stated by Dr. Nehha V Motghare)

- **Hydrocephalus**: - This is a case where the brain of the fetus is not fully developed.
- **Congenital Anomalies**: - e.g., Down syndrome, Heart Problem etc.

Both, in the above cases either the child will die immediately after birth or IUD (Intra uterine

[25] Nikhil D. Datar v. Union of India& Ors, 2009, SLP (C) 5334.

death) i.e., death inside the womb which is sometime becomes danger for the mother life, if not detected in proper time and in some cases the child born will remain alive for some months or year but with severe health problem.

Now the question is, whether woman doesn't have the **actual right** for safe abortion? As in **factual evidence** it is mentioned in the provision that, if there is a risk to the life of the pregnant woman or of grave injury physical or mental health in case of continuation of pregnancy and also when there is a substantial risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped in that case pregnancy can be terminated. But **Dr. Nikhil D. Datar** Case proved it to be false.

Risk on Reproductive Health of Women

A woman must have the right not only for safe abortion but she must have the right to deliver a healthy baby. As a child with severe medical complication not only become burden for the parents but they were neglected from their family members, society, schools etc. And in every case the mother of the baby suffered most which result in severe mental stress and other health problem. Even, reproductive health of women should include both pre- and post-pregnancy term. A woman must have the right not only for safe abortion but she must have the right to deliver a healthy baby. As a child, with severe medical complication not only become burden for the parents but they were neglected from their family members, society, schools etc. And in every case the mother of the baby suffered most which result in severe mental stress and other health problem. Thus, Reproductive health of women should include both pre- and post-pregnancy term.

Why do women have unsafe abortions?

Almost 56% of abortions in India are under the category of unsafe.[26] Unsafe abortions, the third leading cause [27]of maternal deaths in India, is a common recourse for most women in the country, including in the rural pockets, due to various social, economic and logistical barriers.

Stigma is another dimension that prevents women from seeking abortion care from approved facilities.[28] Also, when a woman is legally not allowed to abort, or lacks access to trained providers, she is forced to go to illegal providers, who may be untrained, or may perform the procedure under unhygienic conditions.[29] Doing so can lead to diseases like cancer. An incident occurred in which a woman from Guwahati, Assam went through abortion in a private clinic. The abortion was carried out by an inexperienced medical practitioner. After one month of the process, she felt pain in her abdominal region which grew as time passed. She was later diagnosed with choriocarcinoma, a form of cancer that occurs in a women's uterus.[30]Some of the common causes of unsafe abortions include attempting abortion at home, and visiting uncertified providers such as quacks. Very often the reason for this is limited or poor awareness about legality and availability of abortion services.

THE FAILURE OF THE LAW

In its current form, the MTP Act permits abortion after consultation with one doctor up to 12 weeks. Between 12 to 20 weeks, a woman seeking abortion needs the medical opinion of at least two doctors. Exceptions are made to the 20-week ceiling if continuing the pregnancy poses a threat to either the mother or the baby's life, but only after approval from courts. It is admirable that India was one of the first countries in the world to legalize abortion to encourage family planning and population control. Ostensibly, the reason for the relatively low time frame was to safeguard the girl child by preventing sex-selective abortions. While that is a noble intent, women who discover

[26] Agrawal, Shaifali "56% abortions in India unsafe despite being legal; kill 10 women every day."

[27] "Illegal abortions cause of many maternal deaths". The Times of India.

[28] Siddiqui, Zeba "What the right-to-privacy judgment means for India's abortion law". The Caravan.

[29] Agrawal, Shaifali "56% abortions in India unsafe despite being legal; kill 10 women every day."

[30] Why Is Unsafe Abortion Still A Reality for Millions of Women in India?"*; Feminism in India*.

abnormalities in the fetus or develop complications later in their pregnancies, and rape victims, particularly underage ones, end up bearing the brunt of it.

The court was forced to note that due to advancements in medical technology, pre-natal defects could be revealed even after 20 weeks. And because the MTP Act is outdated and doesn't consider these eventualities, women are forced to move court. Consequently, judgements that are doled out vary drastically due to individual interpretations of law.

In July 2107, a Kolkata woman was allowed to terminate her 26-week pregnancy by the Supreme Court because the fetus suffered from cardiac ailments. In January, it allowed a Mumbai woman to terminate her 24-week pregnancy because the fetus was suffering from anencephaly (a condition in which it can survive only inside the uterus). But in February, the same Supreme Court refused a woman's plea to abort a 26-week-old fetus that would be born with Down syndrome, as they admitted that the child may suffer from severe abnormalities.
Similarly, in 2008, when a couple petitioned the Bombay High Court to abort at 26 weeks when the fetus was diagnosed with a heart defect, they were turned down. This was among the first cases in which the court was forced to note that due to advancements in medical technology, pre- natal defects could be revealed even after 20 weeks, and that perhaps it was time to re-evaluate MTP. It is worth mentioning that the girl's family lost a precious 8 weeks in the long-drawn-out legal proceedings.

Another thing that the law fails to take into account is that often, especially in the case of underage rape victims, pregnancies are discovered very late. Due to the stigma attached to rape and the silence of the victims, underage pregnancies are often only discovered when the child develops health issues and medical intervention is finally sought. In many cases, by the time they come to light, the child is either teetering very close to the 20-week mark or has already crossed it. As a result, there are a slew of cases with young girls and women pleading before courts to allow them to terminate unwanted or unviable pregnancies that are over 20 weeks.

In the case of the 14-year-old girl from UP, 'advanced pregnancy' (32 to 33 weeks) was the court's reason for denying permission to abort. However, it is worth mentioning that the girl's family lost a precious 8 weeks in the long-drawn-out legal proceedings. Today, her extenuating financial

circumstances that have made it impossible for her family to support her and the baby, coupled with their ostracization from society, have forced her to marry her rapist. All of this could have been avoided, had the law worked in favour of the victim, instead of against her.

All these incidents make it evident that unless alternate provisions are made, courts will continue to be forced to evaluate and rule on individual cases. This might work as a stop-gap arrangement, but is obviously not a feasible solution to the problem in the long term. Slow legal machinery is another loop hole in the female feticide fighting mechanism in India

Despite these significant oversights in the law, they are just one part of the problem. The issue is further complicated when our grindingly slow legal machinery makes it medically dangerous to safely terminate the pregnancy, rendering the whole process of seeking legal intervention an exercise in futility.

In January, a 35-year-old HIV+ woman from Bihar was forced to have a baby because her paperwork got stuck at a government hospital for 4 weeks and she crossed the 20-week mark. A long legal battle ensued, which ended with both Bihar's high court and the Supreme Court rejecting her abortion plea in May. The reason: “she was already 26 weeks pregnant by then and abortion was a risky proposition.”

Despite landmark cases ruling for choice, no change in law

In landmark cases such as Suchita Srivastava v. Chandigarh Admin [31]and Devika Biswas v. Union of India, the Supreme Court has held a woman’s reproductive autonomy to be her fundamental right to privacy, and has said that the decision to have or not have a child should be hers alone, devoid of any state intervention. The Apex Court stressed that a medical procedure of abortion cannot be carried out on a woman if she has not consented to it. Hence, the right to reproductive autonomy was held as a Fundamental Right. However, so far, there has not been any visible change in the MTP Act to give effect to these judgments.

[31] Suchita Srivastava & Anr vs Chandigarh Administration, (2009) S.L.P. (C) No. 17985 .

An amendment has been proposed that would increase the upper limit in applying for abortions to 24 weeks, but none of the provisions of the amendment Bill refer to granting autonomy or agency to women over their own bodies in terms of making their decision to abort.

HIGHLIGHT OF THE AMENDMENT BILL [32]

The Medical termination of Pregnancy (Amendment) Bill 2020 was approved by the Union Cabinet, chaired by the Prime Minister, earlier this year to amend the Medical Termination of Pregnancy Act (MTP), 1971. The bill was supposed to be discussed in the Rajya Sabha, but this has been delayed due to the Covid-19 pandemic. While the new bill has been deemed 'progressive' and 'liberal' by the government.

THE PROPOSED AMENDEMENTS:

1. The new bill aims to extend the period of allowed termination of pregnancy up to 20-24 weeks. To terminate until 20 weeks, approval from one registered practitioner would be required, and between 20-24 weeks, approval of two medical practitioners would be needed.

2. Beyond 24 weeks, permission from a medical board would be needed. The medical board supervising the termination of the pregnancy beyond 24 weeks should include a gynecologist, a pediatrician and a radiologist.

3. The upper limit of termination of pregnancy to 20-24 weeks has been extended for 'special categories of women' which will include 'vulnerable women' such as survivors of rape and incest, women with disabilities, minors etc.

4. The new bill includes a privacy clause which states that revealing the name and other details of a woman wanting to terminate a pregnancy is punishable, and may only be revealed to a person authorised by law.

5. The MTP Act as well as the new bill allow 'pregnant women' to terminate a pregnancy if they

[32] Medication Termination of Pregnancy (Amendment) Bill, 2020.

wish to.

The MTP Act is needed in the first place only because the Indian Penal Code (IPC) still criminalizes abortion, hence the usage of the phrase 'medical termination of pregnancy' and not abortion. **Many sections in the MTP Act** begin with 'Notwithstanding anything contained in the Indian Penal Code.'- as a means to protect doctors for conducting abortions. Instead of a doctor-centric law, like the current MTP Act, a new law that acknowledges the rights and autonomy of a pregnant person is needed. Access to safe abortion is a fundamental human right. What is needed is a comprehensive new law which ensures that no person is forced to get an unsafe abortion or continue an unwanted pregnancy. More policies and laws that center sexual and reproductive rights of people are needed. This includes and is not limited to access to comprehensive sexuality education, access to contraception and safe abortion.

Hence the new bill urgently needs to adopt a rights-based approach towards abortion and reproductive health.

SUGGESTION/ OPINION

- **Need for autonomy:** Barring medical complications, the decision to have or not have a child should vest with the pregnant woman alone. An unwanted pregnancy can force women to access unsafe abortions that could cause severe physical and mental injury or even death.

State actions should be limited to providing comprehensive and safe abortion care along with other sexual and reproductive healthcare. Beyond that, any intervention in matters of choice is not only against the principles of equality but also an infringement of the fundamental right to privacy of women.

Forty-eight years ago, in 1971, when conversations about women's reproductive health and rights were still in nascent stages across the world, India became one of the first countries to ensure that women have access to a crucial reproductive health need that of having a safe, legal abortion.

Today, however, India's laws and systems have lagged behind and we are doing a great

disservice to the women in our country by limiting their control over their wombs because of challenges discussed here.

I want to draw attention to the reality on the ground. The reality, as reported in a study published by the Guttmacher Institute in the Lancet in 2018,33 is the deplorable level of access to safe abortion. More than 1,56,00,000 abortions take place in India every year, a large number which are considered unsafe. Many pregnant women are circumventing the formal health system by resorting to self-managed medication abortion, or worse, risking unsafe abortions by approaching dubious providers.

Another unfortunate reality is that unsafe abortions continue to be the third-highest cause of maternal deaths in India. The barriers Indian women face and the risks they take to terminate unwanted pregnancies are something very few can imagine.

- **Make abortion a right :**

We must trust women to make the best decisions for themselves. India must keep up with international standards, and let a woman decide whether she wants to continue her pregnancy, at least in the first trimester. Then most women will not have to justify why they want to get an abortion done. Most abortions take place in the first trimester and at this stage of pregnancy, it is almost impossible to determine gender, thereby ensuring that the right to abortion is not misused to terminate pregnancies based on the sex of the fetus; an issue I know the government is concerned with. The fear of sex-selective abortion should not be used to justify why pregnant women should be stripped of their basic reproductive rights. It is time women have this right over their own bodies and the ability to decide on their own health and well-being.

- **Increase access to medication abortion:**

The Guttmacher study showed that most abortions in India are carried out through

medication – a majority of these taking place outside government-approved health facilities. With a limited pool of qualified doctors and hampered access to health facilities, women have little choice but to self-manage their abortions using abortion drugs from pharmacies.

To provide pregnant women with safe, affordable options closer to their homes, the government must consider bringing in mid-level healthcare providers, including nurses and AYUSH doctors, to provide medication abortion up to nine weeks, as is recommended by the World Health Organization. These providers have been entrusted with running our public health facilities and provide services that are far more complicated than medication abortion. Taking even a small step like that of amending the dated Medical Termination of Pregnancy (MTP) Act, 1971 to allow mid-level providers to provide medication abortion in just public health facilities, can be the game changer for women's access to safe abortion in India.

MTP Additionally, a small tweak in the MTP Rules to allow all MBBS doctors to provide medication abortion will go a long way in addressing the supply shortfall of healthcare professionals. These inclusions will also give us the opportunity of counselling and providing post-abortion contraception to all those women who otherwise miss out on these when their only choice is to self-manage their abortion.

- **Allow abortion after 20 weeks in special cases**

In the last few years, we have heard of umpteen cases where our courts either granted or denied women their permission to terminate unwanted pregnancies. There are two factors that such judgments are related to. First, doctors in India today are armed with technology much superior to what was available when abortion was legalized in 1971. This allows the diagnosis of serious abnormalities in a fetus.

Second, there are cases where pregnant rape survivors come forward much later than the mandated 20 weeks. Women in these distressing situations then have to leave it to the courts to determine their fate, a process that only compounds their trauma.

Amendments in the MTP Act to address this have already been proposed. In 2017, the National Commission for Women recommended increasing the abortion time limit from 20 weeks to 24 weeks for rape survivors and other vulnerable pregnant women. As a member of the committee that worked on suggesting these amendments, I urge the government to give serious consideration to this proposition.

In the tragic cases of young girls surviving rape, I believe Section 5 of the MTP Act allows termination of pregnancy at any point to save the survivor's life. According to the WHO, young girls below the age of 14 years face a higher risk of complications and five times the risk of death as a result of pregnancy than other women – and this, I believe, qualifies the case of these young girls to fall under Section 5 of the MTP Act.

In cases where the fetus has little chance of survival or could lead a life of suffering after being born, the government needs to allow termination of the pregnancy at any point of gestation. I also appeal to the government that they gazette a list of fetal abnormalities that are incompatible with life or would require major medical interventions to survive that doctors and health facilities can refer to.

IN CONCLUSION: ABORTION SHOULD BE A RIGHT NOT PRIVILEGE

In today's day and age, women should not be at the mercy of a system that provides this essential service as a privilege. In a country like India, which is sensitive to women's needs, abortion should be an absolute right. This will not only go a long way in empowering women, but also take us to the next level of accomplishing the UN's Sustainable Development Goals related to maternal mortality.

The solutions to each of these abortion-related challenges have already been suggested in the proposed amendments to the MTP Act. I urge the government to resist partisan pressures and see to it that these recommendations are legislated with immediate effect.

There is one thing I am sure of women who want or need an abortion will find one way or the other to get it done. The question is whether we are there to support them with the rights they rightfully deserve. The world is watching India let us once again be the guardians of women's health and rights.