



Right To Abort: Mother's Perspective

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ABSTRACT

Abortion has always been a contentious subject in India. While in India legalised abortion is allowed under Medical Termination of Pregnancy (MTP) Act, 1971 this privilege is clouded by a limit of 20 week. Under the veil of giving women rights, this Act denies a women in exercising her 'choice' to abort, if foetus abnormalities are discovered beyond the prescribed limit of 20 weeks. While court refusing to engage with the larger question of declaring 20 weeks threshold as unconstitutional and the government not bringing any amendments in the present Act, the present law denies the women of their right to body autonomy, which is a basic human rights. This article is an attempt to raise a fundamental question of the right of women to choose whether to continue or abort beyond 20 weeks without being tied down by religious, ethical or legal rules.

KEYWORDS :

In an era where cry for women's rights can be seen written on almost all the walls, yet one issue involving the basic right of women: the right to autonomy and to decide what to do with their own bodies, is still in vacuum.

Medical Termination of Pregnancy (MTP) Act, 1971 in India allows a woman to get an abortion within 20 weeks of pregnancy, if at any time it is diagnosed that the continuation of pregnancy will pose a grave danger to the pregnant woman's physical and mental health or if there are high probabilities of foetus suffering with severe abnormalities, although medical practitioner permission is needed. The moot question which remains is that the Act is silent about a woman's right to terminate a pregnancy beyond 20 weeks if foetal abnormalities are discovered beyond the prescribed limit. The Act envisage the apathy of legislature of their inability to protect both the pregnant woman's health and the potentiality of human life at various stages of pregnancy.

This article juxtaposes right of choice which is denied to women to terminate her pregnancy after 20 weeks. The grim reality that we have overlooked is the challenges which adult women and young girls faces when they are pregnant against their wishes or when a wanted pregnancy becomes, difficult to continue if the foetus is diagnosed as having serious abnormalities. Under such situation, the state does not offer any special relief for parents of disabled children and the entire burden of medical care, education, daily care and future security falls on the individuals alone. Abortion for serious foetal anomaly often is needed after 20 weeks as tests are mostly done at 18 weeks and results can take three or more weeks. It is a reality that chances of serious foetal abnormalities detection can be diagnosed after 20 weeks.

In an era of everyone talking about women empowerment, there is an urgent need to not only walk the talk but talk the walk about right of women, in India, to take decision regarding their reproductive rights. The judiciary and lawmakers need to maintain a secular outlook and strive to ensure that the women citizens of this country have equal say in the in exercising their right to motherhood in consonance with the Constitution and with accepted international covenants on human rights. These include a right to life for the woman, as also a right to dignity and a right to benefit from scientific progress. Religion and other traditional frameworks which are inherently imbued with patriarchal notions cannot be used by a secular state to direct its laws and policies.

Notwithstanding the legitimate arguments of pro-child proponents who expostulate the morality of aborting a viable life, it is a well-established law that the 'right to life' enumerated under Article 21 of the Constitution entails right to live with dignity. A woman who's certain that she will not be able to fulfil basic needs and give proper care to her child with a life of dignity she envisions must be facilitated to exercise her right to reproductive freedom, which also

is an integral facet of Article 21. The legitimate arguments of pro-child proponents who expostulate the morality of aborting a viable life, there is also a well-established law of human rights that provides a right to terminate her pregnancy in case of foetal abnormalities detection after 20 weeks.

The WHO estimates that of the 26 million births in India, 2 to 3 percent have some sort of a chromosomal abnormality. That's 5 to 6 lakh babies born every year who with a compromised quality of life. Statistics states that every year 26 million pregnant women are screened and there are only less than 15,000 experienced radiologists. Getting the correct diagnose within the deadline of 20 weeks is practically a tall order right now in India.

Hence, there is an urgent need to allow abortion between 20 and 24 weeks, in good faith as twenty weeks is too narrow a window for genetic abnormalities to manifest. This will give sufficient time for doctors to confirm the foetal abnormality and for parents to accept the reality. If after counselling, the mother still decides to go ahead with her pregnancy, it should be her choice not compulsion.

Going by the stark statistic of illegal abortions in India, the outdated law does not stop women from going in the dark to a dangerous quack to terminate an unwanted pregnancy.

There is a necessity to review the Medical Termination of Pregnancy, 1971 Act with respect to abortion laws. Abortions over the stipulated time limit should be decided on a case-to-case basis by a panel of doctors because no pregnant woman would like the court to exercise this choice for her. Ignorance would lead to nothing but women opting to terminate their unwanted pregnancy through quacks.

The stark reality is as a society we have failed in our duty to educate prospective parents and to allow them to make their own choices. Twenty weeks deadline is too short for a doctor to be certain about his findings and for parents to introspect. The psychological fight which a mother has to endure while discovering that her foetus suffers from abnormalities and she cannot terminate is indescribable. The blame game always point at the mother who fights this lonely battle, with the outside world knowing fully well that her child may not live to become a young adult. It isn't fair to push the unsuspecting mother into this spiral of webs of agony when the rules for abortion are clearly defined.

Is it fair to push the unsuspecting mother into this spiral of misery when the rules of the game are clearly defined the moment the diagnosis is made? By the time reality strikes it is too late and 20 weeks are over.

Currently, the law on abortion pays more attention to childbirth than it does childhood or motherhood. The decision to terminate a

pregnancy is never an easy or mechanical decision and it takes a severe toll on the affected parties, especially the woman. There are probabilities that extension of 20 week threshold might open a window for misuse. Therefore, there is a need to strike a balance between protecting the rights of women and their unborn foetus and the legitimate interests of the state to prevent selective sex determination.

In this highly debatable subject, with no inclination of government bringing amendments to the Medical Termination of Pregnancy (MTP) Act, 1971, the entire burden of balancing the interest, legally and socially rest on the shoulder of the honourable Supreme Court. The Supreme Court has permitted, in certain cases, women to abort a foetus older than 20 weeks, in controlled circumstances. However, we have also witnessed the Gujarat High Court denying permission to a 14-year-old rape survivor to abort her 25-week old foetus. While delivering its verdict, the high court acknowledged the adverse physical, emotional and psychological implications of the decision on the petitioner's life, but ultimately chose to subscribe to the law. In 2008, the Bombay high court denied a woman, whose foetus had been diagnosed with abnormalities, permission to abort her 26-week foetus. As there was no risk to the life of the pregnant woman, the court denied the petitioners the right to abort the foetus. Similarly, in 2015, the Punjab and Haryana high court denied a 13-year-old rape survivor permission to terminate her 25-26 week old foetus. More recently the Punjab and Haryana high court did not grant the petitioner, also a rape survivor, permission to terminate her pregnancy as the commissioned medical report did not agree to an abortion.²

All these petition filed, which the Supreme Court is currently hearing, has wide significance: once more, it isn't just asking that the woman in question be given a choice to abort. It's challenging the very constitutional validity of the Medical Termination of Pregnancy (MTP) Act, 1971 and asking that the section of the Act with 20-week limit be declared unconstitutional.

The time has come to review the law which restrict termination of pregnancy within 20 weeks. A mother should have the right to terminate the pregnancy at a later stage, if abnormalities are detected are later stage. The 20 week threshold if it has done anything then it has dismantle the right of mothers to take a gut wrenching decision of aborting or to continue their journey. Parenthood is that blissful journey which every parent look forward to. But unfortunately, not all journey have happy ending. The law might be affecting relatively a small number of women population, but the question still looms that it is affecting, and that what should be considered.

A little extension will come as a boon to a lot of women.' Pressuring someone to continue their pregnancy against their will is inhumane. Making them desperate enough to terminate their pregnancies illegally, in any part of the country and risking their life, is equally bad. The present law is nothing short of being unfair, unjust and against human rights and health rights of women.

One must appreciate that in 1971 it was a very big leap to legalise abortion, however we also need a law to keeps pace with advances in health technology. Government panel, Women's Commission of India have written to the government to seek similar amendments to the Act. In 2014 government had proposed a draft amendment to the Medical Termination of Pregnancy Act that addresses the problem but it is yet to be passed by Parliament. There is no denying of the fact that woman denied of abortion due to bureaucratic knots is completely unwarranted as per the law. The more time the medical termination of pregnancy bill takes to get passed in the parliament the more possibilities of women being made the victim is created

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