



ORIGINAL RESEARCH PAPER

Law

ABORTION AMONG ADOLESCENT GIRLS AND LAWS RELATING TO IT IN INDIA

KEY WORDS: Abortion, Adolescent, Consent, Child Marriage, Reporting, Unsafe Abortion.

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ABSTRACT

It is frequently believed that a woman is incomplete without having children, and in the past and even now, women who are unable to conceive or decide to terminate the child face severe societal repercussions and are held accountable for their choices. A woman has a natural responsibility to provide her children all they might possibly need. Nonetheless, there may be circumstances where woman engages in behaviours that are harmful to the foetus. It could be the result of inexperience, carelessness, or intentional behaviour. It is best to leave the mother's decision regarding abortion to her. Abortion among adolescent is very common as adolescent is considered to be the age where sexual inclination or desires are very evident. Adolescent confront difficulties such as being open to dangerous sexual practises, unprotected sex, nonconsensual sexual encounters, STDs, stigmatisation from society, and more. Adolescents in nations like India face additional difficulties due to higher risks of early marriage, unwanted pregnancies, sexual abuse, patriarchy, and a lack of knowledge about sexual behaviour and risks. This paper focuses on the abortion among adolescent girls particularly (16-18) years, child marriage among adolescents, unsafe abortion and legal framework relating to abortion, mandatory reporting, parental consent and minimum age of consent in India.

RESEARCH METHODOLOGY

This research paper has used non-empirical, doctrinal form of research as its main source of data including secondary sources like court rulings, books, journals, research papers to substantiate the statements

LITERATURE REVIEW

This research paper reviews the literature on unsafe abortion procedures, their side effects, the guidance of the Committee which was established for the children's right, Goffman's theory of stigma. In order to provide abortion-related services that better match the needs of Indian women, it is important to critically analyze what is currently known about abortion in India.

RESEARCH PROBLEM

This paper aims to shed light on the various corners of abortion among adolescent girls and legal framework under The Medical Termination of Pregnancy Act (MTP), 1971 and The Protection of Children from Sexual Offences Act, (POSCO), 2012 -

- 1- Consent of parents or guardian should be mandatory or not in respect of adolescent decision to abortion.
- 2- Revised age of consent and child marriage
- 3- The provision of mandatory reporting of abortion among adolescent.
- 4- Unsafe abortion and its impact on health.

RESEARCH OBJECTIVE

The main goal is to significantly influence abortion in a constructive and good way by the creation of this legal, social, practical, and future-focused formula.

INTRODUCTION

Adolescent is typically defined as the developmental stage that occurs between childhood and maturity and is frequently thought to start at puberty. At the onset of puberty, teenagers' interest in sexuality escalates, and sexuality often takes on a vital role in their lives. But there are some risks connected to sexual intercourse such as unexpected pregnancy and contracting a STD like HIV/AIDS that can be reduced by utilising safe sex methods. There is growing evidence that teen sex is becoming more common in India. There is worry that this could lead to an increase in unplanned pregnancies, abortions, and conflict with current social standards. Developing nations witness roughly 21 million pregnancies

among adolescent girls aged between 15 and 19, each year, resulting in approximately 12 million live births. Nonetheless, there are adolescents who are pregnant faces a variety of challenges during childbirth; there are various dangers linked to both social and biological aspects. Insufficient sexual health education has been linked to higher rates of adolescent pregnancy, sexual assault, and high school dropout. Individuals with lower socioeconomic status or education levels are more likely to experience adolescent pregnancy. Research on risk and protective factors for adolescent pregnancy in low- and middle-income countries has shown that rates are often higher among those with less education or lower socioeconomic status. Nonetheless, it is crucial that we embrace adolescent's developing sexual impulses. Also, it is now well acknowledged that determining the healthcare demands of teenagers necessitates comprehension of their constantly expanding levels of autonomy and capacity for agreement.

The United Nation Convention which was held on Rights of the Child acknowledges the idea of "evolving capacities" in Article 5, which mandates that States Parties must recognize and respect the obligations, rights and duties of parents, extended family members, or legal guardians to provide appropriate guidance and direction to children in exercising their rights as recognized by the Convention, in a manner that aligns with the child's changing abilities.

History of Abortion and its Legal Recognition

Abortion is a known practice that dates back to ancient times. From the time when daasies/kaneez were raped by kings or superiors and had no choice but to abort their child, to the present, when married and unmarried women, adolescent girls, and rape victims either choose to abort or are forced to do so. The Supreme Court of United Nations, in a landmark judgment of Roe v. Wade held that a woman's choice to make a decision to conceal her unintended pregnancy is protected by the "right to privacy", which is backed by the 14th Amendment's concept which is based on personal liberty." This case was a significant win for every woman throughout the world, even though it gave doctors and the government a lot of power. And as a result of the shift in international law, the Parliament established the Shantilal Shah Committee to investigate the matter thoroughly and offer suggestions regarding the legality of abortion. There was a notable shift in perception, and significant weightage was given to gender

justice and reproductive right. Coercing a woman to carry an undesirable pregnancy to term and having an abortion against her will both are violation of her human rights.

The right of women to life

Right to life and dignity is upheld by numerous documents of human rights.

The right of women to non-discrimination

Safe abortion is an essential aspect of gender equality, and when women are denied this access, it amounts to discrimination based on gender under law of rights of human.

The right of Women to reproductive self-determination

It is impossible for a woman to be truly liberated unless she has the power to own and govern her own body. A woman should be entitled to private decision-making relating to her reproductive capacity.

The Supreme Court and High Court of India made it very apparent in *Suchita Srivastava V Chandigarh Administration* that the state must safeguard the freedom of women to choose whether she wants to be a mother or not as part of her Article 21 of the constitution of India which guarantees personal liberty, dignity, and privacy. Explaining the importance of recognizing and giving effect to the right of women to reproductive autonomy, the High Court of Bombay has held that:

Human rights are granted only after birth, according to international human rights law, and an unborn fetus is not considered to be an entity with human rights. Women have absolute autonomy over their bodies and possess the right to make decide on matters that concern them. As a result, a fundamental right under Article 21 of the Constitution of India provides life and personal freedom, which also applies to women.

In light of concerns regarding the escalating population growth in India and the shortage of safe abortion services, the MTP Act of 1971 was enacted to establish limited exceptions to the Indian Penal Code's ban on abortion.

Under the section 3 of *MTP Act 1971*, a woman could choose to terminate her pregnancy up to 20 weeks and the doctor can perform an abortion in the following situations:

- If being pregnant would endanger the woman's life both physically and mentally.
- If there is a strong likelihood that the kid would experience physical or mental anomalies.

Only married women and their partners had access to the option of abortion in the event that contraceptive failed. In addition, any termination after 20 weeks required both the consent of two doctors (as opposed to one RMP as was the case for abortions in the first trimester) and the express permission of the Court.

Recent amendments in the Act

On March 2, 2020, the MTP (Amendment) Bill, 2020 was introduced in Lok Sabha. The changes include the following-

- *Removal of Requirement of Opinion of two RMPs, up to 20 weeks.*
- *Extension of upper limit up abortion to 24 weeks in case of rape, such as rape, incest, and crime victims, disabled women, and adolescents.*
- *Removal of Upper Limit (20 weeks) for Abortions for Foetal Abnormalities-* The Government will specify the makeup and duties of the Medical Board, but the woman must request approval from medical board.

According to Sec 3(4)(a) of the (MTP) Act of 1971, a woman's pregnancy cannot be ended without the written approval of her guardian if she has not reached the age of eighteen.

The case for requiring legislation parental approval for abortions is made on the grounds that it will improve family communication and accountability. Yet, it has been noted that regulations requiring parental approval or authorization do not cater to family dialogue, do not safeguard the health of adolescent girls, and may even be detrimental. The mandatory parental notification legislation delays and hinders pregnant adolescent girl's chance to timely reach to trained professional and receive appropriate medical care which is one of the major drawbacks. Pregnancy is typically suspected by minors later than it is by adults. Teenagers commonly misjudge their ability to acquire private care, and even the idea that sexual health care is not private deters them from seeking help. Legal requirements for parental involvement can further delay medical care if the minor shows up for pregnancy counselling.

The Supreme Court of the United Nations has determined that states may impose parental involvement requirements for minors seeking abortion, but has also upheld the constitutional rights of minors to make their own choices regarding abortion. To ensure that minors are not unduly restricted in exercising these rights, the Court has mandated that adequate provisions for judicial bypass be made available to minors who do not wish to involve their parents. Minors should be motivated and encouraged to talk to their parents and other people who they trust about the pregnancy rather than being coerced or obligated to engage them in their decision to have an abortion. The American Public Health Association, the American Medical Association, the Society for Adolescent Health and Medicine, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and other medical professional organisations all agree on this. According to studies, adolescents are more likely to disclose their pregnancy to their family, if they have a history of being warm, empathetic, and being actively involved in solving problems previously. According to the WHO, "Pregnant adolescent girls may feel discouraged or hesitate from going to required treatments of abortion because of the fact that they would have to ask for permission from their parents or guardians, which increases the possibility that they may go to clandestine abortion providers". Obtaining the consent of guardian for an abortion, for instance, may not be possible if the guardian himself or a member of the guardian's family sexually assaulted the pregnant adolescent girl. In this case, the he will take all necessary precautions to avoid a police investigation by forbidding the girl from getting the abortion.

The POCSO Act, 2012 is a piece of legislation that seeks to safeguard minors under the age of 18 from sexual offenses such as assault, harassment, and pornography. Section 2(d) of the Act explicitly acknowledges that all pregnant minor girls should be considered survivors of rape.

NEED FOR REVISED AGE OF CONSENT

There is a growing amount of knowledge about the decision-making-related cognitive development of adolescents. Although the age of 18 is commonly used as a legal dividing line for determining when an individual is considered a competent decision-maker, there is no concrete evidence to support this age as a universal standard. In reality, an individual's capacity to make decisions can vary widely depending on a range of factors, including their personal circumstances, level of maturity, and life experiences. It is therefore incorrect to assume that young individuals, including adolescents, are inherently incapable of making decisions regarding their reproductive and sexual health. The majority of nations acknowledge that people older than 16 may be able to agree to sexual activity. The legal consent age

in India was 16 as well until the POCSO Act was passed. According to the 2013 recommendation of the Committee on Changes to Criminal Code, which was chaired by Judge J.S. Verma, the consent age should be lowered to 16 years. Recognizing that people older than 16 may be able to give their consent is necessary. Yet when a girl between the ages of 16 and 18 is the victim of sexual assault, she should be entitled to all the protections stipulated by the POCSO Act.

The Union Ministry of Women and Child Development initially included a proviso in the POCSO Bill that acknowledged permission from minors between the ages of 16 and 18 and evaluated whether it was gained under duress, against the child's choice, or through the use of force or violence. Unfortunately, these provisions were dropped from the bill when it was first introduced, leaving us with the current version of the law. Only when consent is given freely and without force, threat, or deception is it considered legitimate. For victims who want to bring charges involving non-consensual sex, the criminal justice system's doors must stay open.

It must be left to the judgment of the court to investigate murky circumstances and determine what is happening in that particular case. It must be done in this way to prevent families from abusing the law to limit adolescent girls' liberty.

Child marriage

According to UNICEF child marriage, puts the lives, well-being, and prospects of girls all over the world in danger. Marriage among children is a severe violation of human rights and a significant obstacle to the growth and development of a country. Studies have found when girls are forced into marriage at young age, they are often denied access to education and other opportunities resulting in cycle of poverty, they are prone to health risks and complications due to early childbirth and often perpetuates violence based on gender. According to 2021 report the estimated number of child brides throughout the world was 650 million. The international community promised to put an end to child marriage by 2030 when it signed on to the Sustainable Development Goals (SDGs). The legislation respecting a married minor girl has not altered, even though a woman must be 18 to provide her permission. Because of the Child Marriage Limitation Act, women can now provide their permission after turning 16 years old. So, the two-year difference raises a new set of problems. Even if a married minor girl gets pregnant and can give consent legally since she is older than 16, she cannot end the pregnancy without the legal guardian's permission.

MANDATORY REPORTING

The laws enacted by the POSCO Act have been reported to have had a significant impact on the number of adolescents who seek abortions. The legal status and restrictions, medical practice, administrative restraints, the accessibility to facilities, funding, and public opinion all have an impact on whether an abortion is safe or not. The POCSO Act's mandatory reporting requirements were severely limited by the Supreme Court in *X v. Government of NCT*, which also balanced the requirement with the MTP Act 1971's confidentiality provision. The court ruled that any doctor performing an abortion on a minor in accordance with the MTP Act is exempt from disclosing the minor's name to the police or in any other future legal proceedings. Under the MTP Act, minors who obtain abortions will now enjoy more protection of their privacy when speaking with clinicians and won't be required to take part in criminal trials.

However, the duty to disclose the incident to police under Section 19 still exists, and if the name of the minor is exposed, they may still be forced to participate in the criminal court system against their choice. As a result, the judgment may not be sufficient in and of itself to safeguard minors.

Even if it is a consensual intercourse between two minors, the POCSO Act classifies any sexual conduct with a juvenile as a crime. According to the Juvenile Justice (Care and Protection of Children) Act, 2015, which distinguishes between children and deems 16 to 18-year-olds as "deliberate intentional adults" who are capable of being prosecuted as adults for horrific crimes, this is ironically in striking contrast to the law. The need to recognize and respect children's developing capacities for consent and their capacity to engage in proceedings regarding whether or not they desire to report is completely ignored by blanket mandatory reporting systems, which also discourage people from seeking medical care. The mandatory reporting provision is "counter-productive," according to the National Commission for the Protection of Children's rights, as parents and kids would put off getting medical care out of concern for social stigma and a lack of resources to pursue legal action in the form of a criminal prosecution. Instead of imposing a multifaceted reporting framework, Section 19 of the POCSO Act imposes a largely punitive mechanism that fosters an antagonistic relationship between families and child protection authorities, frequently discouraging the former from seeking support. Only when reporting methods are "secure, highly publicized, confidential, and accessible" can they be used as a tool to combat abuse. Reporting systems should try to spot such circumstances rather than automatically labeling abuse episodes as criminal offences in the first place. It is critical that state infrastructure is delicately modified to ensure that only cases of abuse—and not consensual relationships between minors—are identified in light of the POCSO Act's criminalization of such interactions.

UNSAFE ABORTION

According to the Status of the World Population Report 2022 published by the UNFPA, 67% of abortions performed in India are unsafe. Due to limited access of information regarding services regarding abortion and reproductive health, teenagers are not likely to recognize pregnancy at early stage and as a result deferring medical care, and resorting to unsafe abortion providers. Adolescents generally aren't aware of the medical options for ending pregnancies offered by licensed healthcare facilities. Yet, due to the family's need for privacy and confidentiality as well as their compliance with society and communal expectations, they choose services from clandestine providers. It has been noted that the number of children seeking abortions has dramatically decreased as a result of the POSCO Act's laws. They leave the system and choose risky abortions. For women of childbearing age, unsafe abortion is a major source of death and health issues. The legal status and limitations, medical practice, administrative constraints, the availability of qualified practitioners, access to facilities, funding, and public opinion all play a role in determining whether or not an abortion is safe.

Even though it might be challenging to find trustworthy information on unsafe and illegal abortion, a number of renowned institutions and academics, including the World Health Organization, Family Health International and the Alan Guttmacher Institute, make the following estimates:

- Each year, 20 million unsafe abortions are carried out worldwide. One unsafe abortion is performed for every ten pregnancies, and one unsafe abortion is performed for every seven births.
- In developing nations, 90% of unsafe abortions occur.
- Abortions are prohibited in one-third of cases worldwide. A safe, legal abortion is unavailable in more than two thirds of Southern Hemisphere nations.
- Between 70,000 and 200,000 women are said to die each year from unsafe abortions worldwide. This indicates that between 13 and 20% of all maternal deaths and in some parts of the world 50% of all maternal deaths are because of abortions which were unsafe. In the developing

countries 99% of death are the result of unsafe abortions, and the majority of them may be avoided.

- Abortions occur 50% of the time outside of the healthcare system.
- Women under the age of 20 make about one-third of those seeking treatment for abortion complications.
- Abortion is allowed in 21% of cases around the world due to societal or financial factors.
- Just 16 percent of women have access when their health is in danger, such as in rape, incest, or cases of foetal abnormalities.
- 18% only have access in situations of life endangerment; 5% only in rape, incest, or other serious crimes.

Effects of Unsafe Abortion

- **Medical** – Adolescent girls from socially disadvantaged backgrounds may face significant barriers to accessing emergency surgical interventions in case of short-term complications arising from unsafe abortion. These complications, which can include septicemia, pelvic infection, sepsis, bleeding, perforation of the uterus or bowel, or cervical or vaginal lacerations, may pose serious risks to their health. Lack of access to appropriate medical care can further exacerbate these risks, leading to potentially life-threatening consequences.
- **Psychological** – The adolescent traumatised by an unsafe abortion has no access to psychological support within the limits of a harsh and unforgiving society. Even healthcare professionals don't perceive the necessity for this kind of help, in reality. As a result of misery, the girl may become confused, ignorant, and guilty, which may push her to engage in risky behavior or perhaps commit suicide
- **Socio-economic** – Survivors of unsafe abortions, particularly teenage girls, may face a range of social challenges such as rejection, ostracization, and condemnation from their families and communities.

SUGGESTIONS

- With the permission of women, abortion should be permitted at any point in the pregnancy. But, India's legal system has yet to accept a woman's complete exercise of physical autonomy.
- Teenagers' access to private care when considering abortion should be safeguarded.
- Concerned medical professionals should firmly advise pregnant teenagers to ask adult for their support and advice while considering all of their options so that they can choose what is best for them. During the early years of parenting, healthcare providers can play an important role in promoting effective communication and nurturing skills among parents. It is crucial to respect the right of pregnant women to make decisions about who should be involved in the process and the final decision regarding the pregnancy. The law needs to be able to distinguish between consenting adolescent sexual activity and rape.
- Married girls between the ages of 16 and 18 and unmarried girls between the ages of 16 and 18 should be treated equally in terms of the legal age of consent.
- It is important to identify and address the causes of contraceptive failure, while also ensuring that a range of effective contraceptive options are widely available. Despite high levels of awareness about contraception, many people still face barriers to accessing and using contraception, such as a lack of spacing methods, misunderstandings, and anxiety around the various options available. This can lead to low levels of contraceptive use, and in some cases, individuals may

turn to abortion as an alternative method of contraception.

CONCLUSION

Adolescent pregnancy is a prevalent issue that has established causes and significant economic, social, and health consequences for individuals, families, and communities. It is widely recognized that evidence-based strategies are necessary to address this problem. The prevention of adolescent pregnancy, childbearing, and child marriage is increasingly becoming a priority at all levels of the world.

UNICEF prioritizes support for the prevention and response to adolescent pregnancy and child marriage in accordance with the Sustainable Development Goals. This includes support to:

- (1) The development of legal and policy frameworks that recognize and support adolescent's sexuality;
- (2) The strengthening of education, employment, and healthcare pathways to support healthy development into adulthood.
- (3) The promotion of gender equality and empowerment, including challenging norms that perpetuate sexual and violence based on gender. Denying people reproductive and sexual rights will only make the current abortion crisis worse. Severe action must be taken against medical professionals who engage in unethical behaviour and perform illegal abortions. Also, local police officials must work with grassroots organizer's to seriously enforce door-to-door literacy initiatives for rural women and men. To eliminate the taboo surrounding abortion, post-abortion care must be strengthened and family members and Panchayat-level institutions must receive regular counseling.

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