REPRODUCTIVE HEALTH OF WOMEN IN INDIA: NEED FOR A CHANGE?

ABSTRACT

'Social justice' has evolved into a demand of modern society, perhaps, the very foundation of it. The world's quest to attain the ever-evasive objectives of social justice is in for a long haul especially when a community is alienated to the point of deprivation. Social justice for women is nothing but a paradox in absence of their reproductive rights, not only in India but around the globe.

Reproductive rights of women are central to her emotional, mental, physical and economic well-being. The Medical Termination of Pregnancy Act, 1971 covers major aspects of these reproductive rights in India. Going by the statistics released by prominent international players like World Bank and UNICEF, India is amongst those to witness the highest numbers of maternal deaths as much as 45,000 every year. Only 20% abortions are held through public or private health facilities. This invariably demands for a closer look to identify the problems within the present framework.

The paper attempts to discuss the current position of reproductive health of women in India and the shortcomings of the existing laws in relation with reproductive health of women. The paper also attempts to study the concept in context of family planning and other programs in India which are directly or indirectly a step towards ensuring reproductive rights and reproductive health of women in India. Doctrinal methodology has been adopted wherein certain statistics, articles, statutory provisions and cases have been analyzed to come up with a meaningful article.

Keywords: reproductive rights, healthcare, women, abortion, pregnancy

1. INTRODUCTION

The Puttaswamy[1] judgement on the *right to privacy* has opened the doors to not just one but several other rights which earlier did not receive the recognition that they deserved in India. For long privacy has been considered as an essential human right around the world. It has found a place even under Article 17 of International Covenant on Civil and Political Rights. The Puttaswamy[2] judgement recognized how dignity is related to right to privacy, giving the right its due.

The right to privacy is a vessel of rights containing within its ambit the right to make sexual and reproductive choices along with various other reproductive rights. The United Nations International Conference on Population and Development was a first amongst the many international conferences that recognizes reproductive rights together with the right to make sexual and reproductive decisions in absence of which there can be no question of reproductive health.

The domain of reproductive rights has been enlarged to include the right to a legal and safe abortion, access to contraception, the right to make decisions concerning reproduction free of discrimination, intimidation and violence and the right to not be a subject of destructive practices such as the forced bearing of children.[3] In spite of that, the bitter truth is that the condition of reproductive health of women around the world, especially in developing countries like India is not good, lack of awareness and low female literacy rate being one of the few demons.

The World Bank and UNICEF have pointed out that with 45,000 maternal deaths every year, India witnesses among the highest number of maternal deaths worldwide. Further reports have suggested that unsafe abortions are among the prime causes of maternal deaths in India as half the pregnancies are unintended which lead to a number of women going for abortions. Another disturbing trend shows that only 22% abortions are done through public or private health facilities. These issues raise serious heath, primarily reproductive health concerns for women.

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[1] Justice K. S. Puttaswamy (Retd.) and Anr. v. Union of India, (2017) 10 SCC 1.
[2] Ibid.
[3] Arijit Ghosh & Nikita Khaitan, *A Womb of One's Own: Privacy and Reproductive Rights,* EPW ENGAGE (May 9, 2020, 9:00 PM), https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights.

In 2008, the WHO estimated that "reproductive and sexual health problems account for 20% of the global burden of ill-health for women, and 14% for men."[4] As per the United Nations Population Fund (UNFPA), "unmet needs for sexual and reproductive health are the culprit depriving women of the right to make crucial choices about their own bodies and futures which in turn affects family welfare. It is women who usually bear and nurture children, so their reproductive health is inseparable from gender equality."[5]

1.1 MEANING AND SCOPE

In a general sense, reproductive health suggests "persons indulge in responsible, satisfying and safer sex life including the capability to reproduce and the freedom to decide if, when and how often to do so"[6]. According to RJ Cook and MF Fathalla, "*reproductive rights are legal rights and freedoms relating to reproduction and reproductive health."*[7]

The World Health Organization has defined reproductive rights as mentioned below:

"*Reproductive 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. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence."*[8]

The reproductive health is a part of a broad group of human rights popularly known as SRHR (the sexual and reproductive health and rights). It mainly covers four areas-sexual rights and sexual health, reproductive rights and reproductive health. These are intrinsically interlinked. Over the time, they have extended to "right to access education regarding sexual and reproductive health,

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[4] World Health Organization, *World Health Assembly adopts first global strategy on reproductive health and resolution on the family and health*, WHO (May 9, 2020, 9:30 PM), https://www.who.int/mediacentre/news/releases/2004/wha2/en/.

[5] UN Population Fund, *Sexual reproductive health*, UNPFA (May 9, 2020, 9:30 PM), https://www.unfpa.org/sexual-reproductive-health .

[6] WHO Regional Office for Western Pacific, *Integrating poverty and gender into health programmes: a sourcebook for health professionals (sexual and reproductive health)*, WHO (May 9, 2020, 9:50 PM), https://www.who.int/gender-equity-rights/knowledge/poverty-gender-in-health-programmes-sexual-reproductive-health/en/.

[7] Rebecca J. Cook & Mahmoud F. Fathalla, *Advancing Reproductive Rights Beyond Cairo and Beijing*, 22 INTERNATIONAL FAMILY PLANNING PERSPECTIVES 115 (1996)

[8]World Health Organization, *Sexual and Reproductive Health*, WHO HRP (May 9, 2020, 9:45 PM), https://www.who.int/reproductivehealth/en/.

an end to female genital mutilation, and increased women's empowerment in social, political, and cultural spheres".[9]

1.2 HISTORICAL EVOLUTION

While many might think that International Conference on Population and Development was the first time when reproductive health and reproductive rights were talked about, that is, only in 1994, the origin of such rights goes way back than that.

The second wave of feminism brought with itself a demand for a number of rights primarily including the socio-economic rights. While the first wave of feminism covered only basic rights like civil and political rights, the second-wave feminism covered a huge variety of subjects like reproductive rights, sexuality, the workplace, family, *de facto* inequalities, and official legal inequalities.[10] It is believed that this was actually the first time that talk of reproductive health and reproductive rights of women was done. This was during the middle of the 20th century which primarily gained momentum in early 1960s.

Interestingly, around 1951, India was the first country to initiate a family planning scheme. However, the main focus of the program was not reproductive health at that time but nevertheless, it was appreciated as it was an initial step in the area of reproductive health and reproductive rights.

This was followed by the radical Medical Termination of Pregnancy Act, 1971 which governs abortions and provides conditions in which they can be permitted. The Act however has certain lacunas which would be discussed later in the paper.

A revolutionary international step towards rights of the women was the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 commonly known as CEDAW. It is considered as the International Bill of Rights for Women and the most valuable document on human rights of women. It consists of 30 articles along with a preamble. These 30 articles mention many rights of the women. However, "Article 11 of the convention provides reproductive health rights in the form of right to protection of health and safety in working conditions, including the safeguarding of the functioning of reproduction".

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[9] A Glasier, AM Gülmezoglu, GP Schmid, CG Moreno, PF Van Look, *Sexual and reproductive health: a matter of life and death*, LANCET 368 (2006).

[10] Elinor Burkett, *Women's rights movement: political and social movement*, BRITANNICA ONLINE ENCYCLOPAEDIA (May 10, 2020, 9:00 PM), https://www.britannica.com/event/womens-movement.

Approximately twenty five years ago, the terminology of "sexual and reproductive health and rights" (SRHR) was explored at the Cairo International Conference on Population and Development (ICPD)[11] where the Cairo Programme defines reproductive health in para 72 as:
"a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant."[12]

Another conference at the International level was the 1995 Fourth World Conference on Women (FWCW) which was held in Beijing. The definition of reproductive health as given by Cairo Programme was reaffirmed along with an advancement of wider interests of women, especially in the area of sexual rights. Paragraph 96 states:

"The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences."[13]

As the International Conference on Population and Development 1994 concluded, "a Program of Action (PoA) was developed, approved and adopted by 179 countries. The Program of Action "affirmed sexual and reproductive health as a universal human right and outlined global goals and objectives for improving reproductive health based around central themes of free choice, women's empowerment, and viewing sexual and reproductive health in terms of physical and emotional

[11] United Nations, Report of the International Conference on Population and Development (September 1994).
[12] *Supra* note 6.
[13] UN Women Watch, *Fourth World Conference on Women*, UN WOMEN WATCH (May 10, 2020, 9:30 PM), https://www.un.org/womenwatch/daw/beijing/platform/.

well-being".[14] Also, a series of targets were outlined for achieving universal access to reproductive health throughout the world.

The Millennium Development Goals (MDGs) were framed in early 2000s. Although reproductive health was not expressly a goal, it later acquired status of a vital component of Goals 3, 4, and 5.[15] Goal 3 of Millennium Developmental Goals is "to promote gender equality and women empowerment". Goal 4 concerns with "reducing child mortality rates". Goal 5 is to "improve maternal health". In 2010, the original Program of Action was revisited by the UN in order to update it "to "reflect their objective of achieving universal reproductive health care" by 2015".[16]

2. RELATIONSHIP BETWEEN REPRODUCTIVE RIGHTS AND FAMILY PLANNING

As asserted by the scientist philosopher and one of most renowned Professor Egon Diczfalusy, there have been at least ten revolutions that shaped the world. He identifies these revolutions as "scientific, technological, information, post-industrial, globalization, environmental, contraceptive, reproductive health, gender equality, and demographic". Out of these, the revolution for reproductive health is very much related to the revolution for contraceptive and gender equality. All these are together covered by the family planning programs.

One of the earliest efforts towards reproductive health began in India in 1950s, even before the demand for reproductive rights were made by second wave of feminism. These efforts were in the form of family planning program. India was under the rule of colonists for long and after independence faced the dual tragedy of lack of resources and over-population. The family planning at that time was thus primarily centered around the objectives of economic prosperity. Over a period of time the objectives of family planning increased its area of focus from economic prosperity to human rights and reproductive health, primarily of women.

Over the course of the program, it was found that there was a remarkable decrease in birth rate as a result of family planning program. Credit for this must be given to government efforts. However,

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[14] RA Fincher, *International Conference on Population and Development*, 24 ENVIRONMENTAL POLICY & LAW 309 (1994).
[15] *Supra* note 9.
[16] International Conference on Population and Development. Cairo, Programme of Action, UNFPA (May 10, 2020, 9:39 PM), https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf

a disturbing data shows that infant and maternal mortality rates and morbidity with unsafe abortions persisted in large numbers.

A recent report of NHFS has shown that in major parts of India, the number of children that women actually desire is near replacement level. Thus, over one third of the pregnancies are undesired leading to increased number of abortions. Though legal, abortions are not easily accessible in India. However, access to contraceptives can help in reducing the number of abortions.

A survey conducted related to reproductive health and contraceptive usage, though very difficult to conduct because people are not willing to talk on such issues showed that awareness regarding reproductive health and contraceptive use is very low in India. Though contraceptive use is almost 50 percent in India, women are not fully educated about what they should or should not use.[17] Between 2005-06 and 2015-16, the total fertility rate declined from 2.68 to 2.18 births. However instead of being accompanied by increased contraceptive use as expected, contraceptive use also declined from 56.3% to 53.5% indicating declining quality of contraceptive use data and difficulty in collecting the same.[18]

Also, the method of contraception used by majority of women in India is sterilization which indicates that contraception is used mainly for limiting birth rather than planning birth.[19] This shows the shortcomings of the family planning program.

The ministry responsible for framing and implementing family planning in India is the Ministry of Health and Family Welfare. In 2017, it came up with Mission Pariwar Vikas, an initiative towards family planning. Despite these efforts, the progress relating to reproductive health and family planning in India shows mix results.

The government has also launched National Rural Health Mission to address reproductive health concerns. It is thus believed that if efforts of the government are coupled with individual efforts

[17] Anrudh Jain, *Information about methods received by contraceptive users in India*, 46 JOURNAL OF BIOSOCIAL SCIENCE 798 (2017)

[18] Sonalde Desai, *Minding the gaps in India's data infrastructure*, THE HINDU, October 24,2019.

[19] Saroj Pachauri, *Priority strategies for India's family planning programme*, 140 (Suppl 1) THE INDIAN JOURNAL OF MEDICAL RESEARCH 137(2014)

and awareness programs along with new initiatives like NHRM, India would surely be able to reach its closer to the Millennium Development Goal targets in the area of reproductive health.[20]

3. LEGISLATIVE FRAMEWORK IN INDIA

In India, reproductive rights by far have been limited to child marriage, female foeticide, menstrual hygiene and sex selective procedures. These issues are of paramount importance. However, the core issues pertaining to a woman's procreative rights such as maternal mortality and unsafe abortions are rarely discussed and often ignored.[21]

3.1 PROTECTION UNDER THE INDIAN CONSTITUTION

Under the India Constitution, as per the mandate enshrined within Article 21, a person cannot be deprived of his life or personal liberty except in accordance with the procedure established by law.[22] This Right to life and personal liberty also encompasses within its ambit the "Right to health and medical care".[23] Therefore, reproductive health and the rights pertaining thereto are protected under Article 21 which intends to safeguard these rights in the form of fundamental rights.

In addition to this is Article 47 of the Indian Constitution which states improvement of public health as one of the primary duties of the state.[24] Article 47, thus, confers a responsibility on the State to improve the public health of its people. It can be rightfully inferred that from this provision the state is duty bound to take measures for the purpose of reproductive health of women in India.

3.2 PROVISIONS UNDER THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The Indian legislative framework is such that these issues are covered mainly under the Medical Termination of Pregnancy Act, 1971 that permits a woman to terminate her pregnancy in certain specified cases listed under the Act. The MTP Act only covers a limited number of issues pertaining to women's reproductive health, rest are unaddressed or are not directly addressed.

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[20] VK Paul, HS Sachdev, D Mavalankar, *Reproductive health, and child health and nutrition in India: meeting the challenge*, THE LANCET (2011)
[21] Jayna Kothari, Maya Unnithan & Siri Gloppen, *A half-written promise*, THE HINDU (May 12, 2020, 9:00 PM) https://www.thehindu.com/opinion/op-ed/a-half-written-promise/article26914712.ece.
[22] INDIAN CONST. art 21.
[23] State of Punjab v. M.S. Chawla, AIR 1997 SC 1225.
[24] INDIAN CONST. art 47.

Before the enactment of the MTP Act, abortion was primarily dealt under Section 312 of the Indian Penal Code, 1860. According to Section 312, termination of pregnancy of a woman with or without her consent was a punishable offence unless it was done to protect the mother's life.[25] Under any other circumstances, it was not permitted.[26] After a report was submitted by the Central Planning Commission in 1966 to do away with Section 312 IPC and introduce another legislation to specifically address the issue of termination of pregnancy, the MTP Act was enacted by the Parliament in the year 1971.

As previously discussed, the Act was introduced with a view to encourage family planning. Though the foremost objective was family planning, the Act was way ahead of its time since it legalized abortion in India when the world was still coming to terms with the procreative rights of women.

The Act lays down its objective within its Preamble where it only permits certain pregnancies to be terminated and that too by a registered Medical Practitioner. [27] It signifies that even though the Act legalizes abortion, however, the termination is subject to conditions.

3.2.1 CONDITIONS FOR TERMINATION OF PREGNANCY

Section 3 of the Act lays down the conditions subject to which a Medical Practitioner can terminate the pregnancy of a woman. Pregnancy can be terminated only in the cases mentioned below:

i. Substantial risk to pregnant woman's life or of grave injury to her mental and physical well-being if the pregnancy continues.
ii. Substantial risk of handicap due to from mental or physical abnormalities to child born out of pregnancy.
iii. Pregnancy alleged to have been caused by rape of pregnant woman.
iv. Pregnancy caused due to failure of contraceptive methods used by either of the spouse for the purpose of restricting the number of offspring.
v. Pregnancy of lunatic or a minor with written consent of her guardian.

[25] Indian Penal Code, 1860 § 312.
[26] Pyali Chatterjee, *Medical Termination of Pregnancy Act: A Boon or a Bane for a Woman in India-A Critical Analysis*, 5 INTERNATIONAL JOURNAL OF SCIENCE AND RESEARCH 236-240 (2016).
[27] Medical Termination of Pregnancy Act, 1971, Preamble.

This section further stipulates that pregnancy can be terminated in the aforementioned conditions only with the opinion of a single medical practitioner formed in good faith if the length of the pregnancy is within the period of twelve weeks. If the duration has exceeded a period of twelve weeks but is within the period of twenty weeks, then, pregnancy can be terminated only with the consent of two medical practitioners. After twenty weeks pregnancy cannot be terminated.

3.2.2 IMPORTANT CASE LAWS

The Courts have established that right to health is an essential part of right to life as envisaged under Article 21 of the Indian Constitution. The right to health extends to the reproductive and sexual rights as well. Of late, the judiciary has played a dynamic role in development of the legal discourse in connection with reproductive rights in India.

The *Puttaswamy judgement* often hailed as iconic and nothing short of a landmark, is an ideal example how Hon'ble Supreme Court views the gender rights. It categorically recognized a woman's right to sexual autonomy and "make reproductive choices" as a part of life and personal liberty guaranteed in the form of fundamental rights by the Constitution of India.[28]

In *Devika Biswas v. Union of India*, the Apex Court recognized gender equality and women's autonomy as fundamental part of her reproductive rights. The Supreme Court also stated that for the purpose of exercising these rights, the "right to make a choice regarding sterilization" with free and informed consent in absence of coercion would come within the purview of reproductive rights.[29] It further went on to state that reproductive rights under right to health include the right to access information relating to reproductive health and other facilities, goods and services that help persons in taking knowledgeable and responsible decisions about their reproductive activities without any coercion.[30]

In the case of *Suchita Srivastava v. Chandigarh Administration*, the Supreme Court remarked that the woman'right to reproductive choices is not subject to any limitations. It includes "the right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods."[31] It further went on to add that women are free to avail birth-control measures like the

[28] (2017) 10 SCC 1.
[29] (2016) 10 SCC 726.
[30] Ibid.
[31] (2009) 9 SCC 1.

sterilization process. The woman's procreative rights consist of the right to carry pregnancy for full term, the right give birth to a child and right to eventually raise the child.[32]

While addressing the issue of access to treatment and medical facilities, the Delhi High Court in the case of *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors. and Jaitun v. Maternity Home, MCD, Jangpura & Ors.* [33] iterated that a woman should not be precluded from availing the treatment at any stage. It is the function of the public health services to provide treatment regardless of her socio-economic background.

While the general rule is that the MTP Act does not allow for termination of pregnancy beyond the term of twenty weeks, in several cases such as the case of *Mrs. X v. Union Of India,*[34] the Apex Court following a consultation with the Medical Board allowed the woman to undergo an abortion where the duration of the pregnancy exceeded the period of twenty weeks on account of substantial risk to her mental as well as physical well-being if pregnancy allowed to be continued.

In *Murugan Nayakkar v. Union of India,*[35] the court allowed a 13 y/o rape victim to terminate her pregnancy which exceeded over thirty weeks after taking into account the mental trauma, sexual abuse of the victim and the recommendations of the Medical Board.[36]

Similarly, numerous other judgements have been passed by the Courts wherein they have allowed termination of pregnancy exceeding twenty weeks after consulting the Medical Board.[37]Thus, the Report of the Medical Board plays an important role in determining whether a pregnancy should be allowed to be aborted or not.

4. CHALLENGES TO WOMEN'S REPRODUCTIVE RIGHTS

Despite the legal provisions being in place, according to a report published by Lancelot Global Health, about 78% of women who aborted their pregnancies, did so outside of the available health

[32] Ibid.
[33] 172 (2010) DLT 9.
[34] 2017 SCC OnLine SC 124.
[35] 2017 SCC OnLine SC 1902.
[36] Shradha Thapliyal, *Abortion jurisprudence in the Supreme Court of India: Is it the woman's choice at all?,* CENTRE FOR LAW & POLICY RESEARCH (May 12, 2020, 9:00 PM) https://clpr.org.in/blog/abortion-jurisprudence-in-the-supreme-court-of-india-is-it-the-womans-choice-at-all/.
[37] Meera Santosh Pal v. Union of India, 2017 SCC OnLine SC 39; Tapasya Umesha Pisal v. Union of India, (2018) 12 SCC 57.

facilities.[38] This indicates that the laws have failed to achieve the purpose they sought to achieve in the first place. In India, with specific reference to the reproductive health and rights of women, challenges are not limited to laws but various other socio-economic issues. Scholars and activists have demanded for reforms in the existing socio-legal framework which has been inefficient in dealing with these inadequacies. Some of these shortcomings have been mentioned below:

4.1 SHORTCOMINGS OF THE MTP ACT

The Indian legal system as well as the MTP Act suffers from some serious defects. The MTP Act has become outdated with the advancement in medical technology. It has not been able to keep abreast with recent developments in medical science. There are times, where foetal abnormalities may arise in pregnancy after twenty weeks. In such case, to get the pregnancy terminated is very difficult under the Act.[39]

Moreover, the mandatory requirement of a registered medical practitioner for termination of pregnancy creates a dilemma in remote areas where a medical practitioner is not readily available. Women have to seek help from persons such as the midwives or nurses who are not authorized to perform abortions under the Act.[40]

4.2 CONFLICT IN LAWS

The Protection of Children from Sexual Offences, 2012 and the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 are the two other legislations that may come into conflict with the provisions of the MTP Act. For minor rape victims, the provisions of POCSO Act become applicable. While for the purpose of pre-natal diagnosis, the PCPNDT Act is operative. The implementation of POCSO and PCPNDT may at times act as a barrier to safe abortions as certain laws are in conflict with the provisions under the MTP Act. This conflict makes it hard for women to resort to the lawful procedures provided under the MTP Act.

4.3 LACK OF IMPLEMENTATION

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[38] Neetu Chandra Sharma, *Why India needs a new MTP Act*, LIVEMINT (May 12, 2020, 9:00 PM) https://www.livemint.com/science/health/why-india-needs-a-new-mtp-act-1567317067262.html.
[39] Ibid.
[40] Aarti Dhar, *A strong case for amending MTP Act,* THE HINDU (May 12, 2020, 9:00 PM) https://www.thehindu.com/sci-tech/health/policy-and-issues/a-strong-case-for-amending-mtp-act/article5142398.ece

The Act provides that for termination of pregnancy, the consent of the pregnant woman alone is required. However, in practice that is not the procedure adopted by health care facilities who demand that the husband should consent to such termination.[41] Also, the Act requires that second trimester abortions can be done only with the consent of two medical practitioners. In rural areas especially, where the people are precluded from access to basic healthcare facilities, it is difficult to find a second medical practitioner.

4.4 ARCHAIC PROVISIONS

The Act does not keep in mind the reproductive rights of the women. A woman must have the right to make reproductive choices. The Act only permits termination after the woman establishes that there is a contraceptive failure or if any of the other prescribed conditions are satisfied. The Act does not give her the right to choose whether she wants the baby or not.

Further, there is ambiguity in the Act regarding the position of unmarried women to terminate their pregnancies in case of failure of contraceptive methods. The Act does not talk about the rights of unmarried women. Added on to this is the attitude of doctors who are often uncooperative as there still persists a stigma attached to pregnancy outside of marriage.

4.5 SOCIO-ECONOMIC CHALLENGES

The Act only permits abortion in the situations prescribed under it. It does not take into account the emotional and economic impact a pregnancy might have on the woman. It does not consider the fact that the pregnant woman may not be capable to support and take care of the baby.

Perhaps the biggest challenge posed to the reproductive health and rights of women is the blissful ignorance that surrounds it. A woman's reproductive rights are brushed under the carpet in place of more "important and legitimate concerns". They are not deemed to be relevant enough to demand our focus and attention.

For termination of pregnancy exceeding twenty weeks, often the women have to approach the Courts for granting them permission. The decision is subject to the opinion of Medical Board

[41] S. Kosgi, V. Hegde N., S. Rao, S. Bhat Undaru, & N. Pai, *Women reproductive rights in India: prospective future* 10(1) ONLINE JOURNAL OF HEALTH AND ALLIED SCIENCES 1-5 (2011).

which violates the right of the woman to make reproductive choices. Also, the litigation in relation with abortion is cumbersome and an expensive affair.[42]

5. MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2020

Recently in March 2020, the Medical Termination of Pregnancy (Amendment) Bill, 2020 was introduced in the Lok Sabha, which was eventually passed by the lower house of the Parliament. This Bill seeks to amend the provisions of MTP Act, 1971.[43]

5.1 PROPOSITIONS UNDER THE BILL

The Bill provides a definition for the term "termination of pregnancy" According to the definition proposed to be inserted as 2(e) in the MTP Act, termination of pregnancy is "the procedure undertaken to terminate a pregnancy by using medical or surgical methods."[44]

The bill increases the upper limit for termination of pregnancy. It provides that pregnancy can be terminated between 20 to 24 weeks if two registered medical practitioners approve it. Further, the termination upto 24 weeks is only allowed for certain "special categories of women" specified by the Central Government.[45]

The bill proposes to replace "married woman and her husband" with "woman and her partner", thereby allowing an unmarried woman to terminate her pregnancy in case of contraceptive failure.[46]

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[42] Nikhil Dhatar, *Amend the MTP Act: Current version is archaic and causes needless suffering to pregnant women,* TIMES OF INDIA (May 12, 2020, 9:00 PM) https://timesofindia.indiatimes.com/blogs/toi-edit-page/amend-the-mtp-act-current-version-is-archaic-and-causes-needless-suffering-to-pregnant-women/.

[43] Akriti Anand, *LS passes bill raising upper limit for permitting abortions from 20 to 24 weeks*, INDIA TODAY (May 12, 2020, 9:00 PM) https://www.indiatoday.in/india/story/ls-passes-bill-raising-upper-limit-permitting-abortions-from-20-to-24-weeks-1656625-2020-03-17.

[44] Medical Termination of Pregnancy (Amendment) Bill, 2020, amendment to Section 2.

[45] Abantika Ghosh, *Explained: Changes in 1971 abortion law, and why India feels it necessary*, THE INDIAN EXPRESS (May 12, 2020, 9:00 PM) https://indianexpress.com/article/explained/explained-1971-abortion-law-changes-india-6244999/

[46] Ibid.

In case of foetal abnormalities, the upper limit will not be applicable. Termination will be subject to the approval of the Medical Board. For this purpose, Medical Boards are required to be constituted by every state.[47]

Finally, the Bill seeks to protect the privacy of the woman terminating her pregnancy. Identity of such shall not be disclosed to anyone except to the person who is authorized under law. Moreover, in case of contravention, punishment with imprisonment extending to one year or fine, or both has been provided by the Bill.[48]

5.2ANALYSIS OF THE MTP (AMENDMENT) BILL, 2020

The Bill wants to do away with most of the lacunas that existed in the 1971 Act. The Bill is a welcome step in the positive direction. The Bill is inclusive in nature, as opposed to the MTP Act which made categorical discrimination between a married and an unmarried woman. The Bill also takes into account the abnormalities that can arise even after the gestation period and makes provision to address these issues.

It recognizes a woman's autonomy and privacy over her reproductive choices. However, termination is only provided in case of contraceptive failures. This is in furtherance of the argument that the choice to terminate pregnancy must remain with the woman and termination must not only be allowed in case of contraceptive failures. While the Bill is commendable, it still remains silent on socio-economic aspects as discussed above.

6. KEY SUGGESTIONS

Despite being raised in mid-20th century, the issue of reproductive health, primarily for women is still a cause of concern. Although contraceptives are available thanks to government schemes and family planning programs, the burden of these contraceptives falls usually upon women, primarily in the form of sterilization. While family planning and health schemes try to rectify the issues, the truth remains that India accounts for a large number of unsafe abortions leading to maternal deaths. The Medical Termination of Pregnancy Act, 1971 needs a serious relook. The Act needs to be amended as soon as possible to keep it abreast in order to deal with the recent ongoing issues.

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[47] Sangeeta Nair, *Medical Termination of Pregnancy (Amendment) Bill, 2020 passed by Lok Sabha*, JAGRAN JOSH (May 12, 2020, 9:00 PM) https://www.jagranjosh.com/current-affairs/medical-termination-of-pregnancy-bill-increased-gestation-limit-1580292098-1

[48] Ibid.

Moreover, it is essential to provide a legislative framework enumerating the reproductive rights of women with an objective to safeguard them against any possible violation. The implementation of the laws, is another bar that needs to be overcome.

It is hoped that Medical Termination of Pregnancy (Amendment) Bill, 2020 which has been passed by Lok Sabha and aims to extend the upper limit for termination of pregnancy to 24 weeks from the current upper limit of 20 weeks amongst others will become an Act soon and will redress at least some of the shortcomings of the Act and deal with cases where women are forced to continue with the pregnancy because time of 20 weeks has passed which not only violates the right to liberty of women but also causes misery to them.

Further, it is suggested that panchayats and local level bodies should be given a task of ensuring that pregnant women in their area are provided with proper medical facilities and child birth or abortions take place within proper health facilities like hospitals so that risk to health is reduced. The local bodies also need to ensure and provide access to government schemes related to the matter to women so that women reproductive health is not a distant dream.

7. CONCLUSION

The UN and all the global leaders including the Indian Prime Minister have emphasized time and again that 21st century is India's century. So far, India has been able to make its mark by way of not only fighting the social evils but also increasing literacy and innovation. This success is, however, only half-earned when women, who constitute half of our demography, are deprived of their basic reproductive rights which as a result jeopardizes their reproductive health.

Though India is yet to cover miles in ensuring the women their sexual and reproductive rights, increased accessibility of government schemes and contraceptives as well as awareness programs regarding the same coupled with changes in the MTP Act would hopefully make the condition of reproductive health, especially for women better.

Therefore, the need of the hour is to make use of the 21st century skills of creative thinking, collaboration, creativity and communication to ensure that implementation of the laws takes place supplemented by measures being adopted at the grass-root level. This will not only safeguard

reproductive rights of women but would also establish India as a world leader when it comes reproductive health for women, thereby making the 21st century, India's century.