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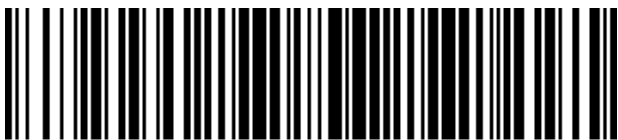
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Legalization and enforcement of abortion for Women: Focus on rape victims

India

Kapil Naresh and Ananth M

ABSTRACT

Access to abortion is arguably needed when pregnancy is that the results of rape, both within and outdoors marriage, and mostly when a lady has been raped. the supply of services remains highly construed due to the way abortion providers interpret the law. we discover that big damage is inflicted on women and girls by misinterpretation of the laws on abortion and rape, combined with a scarcity of understanding of the intense damage rape does, particularly repeated rape, and alongside other kinds of assault and abuse. Domestic laws in India place a transparent obligation on health professionals to supply immediate care and treatment to rape survivors, including timely access to abortion. This paper will bear the medical understanding of abortion to urge more clarity on procedural aspects and methods that correlates case by case and sought legal discourse in abroad for comparing the legislations, and Indian law with court practices on that.

INTRODUCTION

Abortion is that the removal of pregnancy tissue, products of conception or the foetus and placenta (afterbirth) from the uterus. In general, the terms foetus and placenta are used after eight weeks of pregnancy. Pregnancy tissue and products of conception talk to tissue produced by the union of an egg and sperm before eight weeks. The, Other terms for an abortion include elective abortion, abortion, termination of pregnancy and induced abortion.

PREPARATION FOR ABORTION:

The doctor will ask about your anamnesis and examine you. whether or not you used a home bioassay, another bioassay often is required to verify that you simply are pregnant. In some cases, you may need an ultrasound to work out what percentage weeks into the pregnancy you're and also the size of the foetus, and to form sure the pregnancy isn't ectopic. A maternity is one that's growing outside of the uterus. A gestation usually occurs within the tube that carries the egg from the ovary to the uterus (Fallopian tube) and is often called an ectopic pregnancy. A biopsy will determine your blood group and whether you're Rh-positive or negative. The Rh protein is created by the red blood cells of most girls. These blood cells are considered Rh-positive. Some women have red blood cells that don't produce Rh protein. These blood cells are considered Rh-negative. Pregnant women who have Rh negative are in danger of reacting against fatal blood that's Rh-positive. Because a reaction can harm future pregnancies, Rh-negative women usually receive an injection of Rh immunoglobulin (RhIG) to stop Rh-related problems after miscarriage or abortion.

PROCEDURE IN ABORTION:

Doctors can use medications, surgery, or a mixture of both to finish a pregnancy. the strategy depends on how far along within the pregnancy you're, your medical record, and your preference. Abortions during early pregnancy, before 9 weeks, is done safely with medications. Abortions between 9 and 14 weeks usually are done surgically, although medications could also be accustomed help soften and open the cervix. After 14 weeks, abortions will be done using labour-inducing medications that cause uterine contractions or by using these medicines together with surgery.

MEDICAL ABORTION:

Abortions completed with medication, called medical abortions, can be performed within 70 days of gestation. Days of gestation are the number of days beginning on the first day of your last menstrual period.

Most often doctors use a combination of mifepristone and misoprostol. Mifepristone (Mifeprex). Mifepristone is taken orally as a pill. This drug counters the effect of progesterone, a hormone necessary for pregnancy.

Side effects include nausea, vomiting, vaginal bleeding and pelvic pain. These symptoms usually can be treated with medications. In rare instances, there may be heavy bleeding. In that case, you may be admitted to a hospital and given blood transfusions.

Mifepristone is more effective when another medication, such as misoprostol (Cytotec), is taken 24 to 48 hours later. It causes the uterus to contract. Between 92% and 97% of women who receive mifepristone in combination with, or followed by, misoprostol has a complete abortion within 2 weeks.

MISOPROSTOL (CYTOTEC): Misoprostol is almost always used in conjunction with mifepristone to induce a medical abortion. Misoprostol is a prostaglandin-like drug that causes the uterus to contract. There are a few ways to take the drug. The easiest method is to place the tablets between your gum and cheek (called the buccal route). Misoprostol can be inserted vaginally which is just as effective. Swallowing the pills or putting them under your tongue is less effective and also has more side effects, such as diarrhoea, nausea and vomiting.

METHOTREXATE: Methotrexate is used less often since the U.S. Food and Drug Administration (FDA) approved mifepristone. However, methotrexate may be used in women who are allergic to mifepristone or when mifepristone is not available. It should not be used for gestational age greater than 49 days. Methotrexate usually is injected into a muscle. Between 68% and 81% of pregnancies abort within 2 weeks; 89% to 91% abort after 45 days. Methotrexate is the medication most often used to treat ectopic pregnancies, which are implanted outside the womb. It kills the fast-growing tissue of ectopic pregnancies. When doctors give methotrexate to treat ectopic pregnancy, pregnancy hormone levels must be monitored until levels are undetectable in a woman's bloodstream. This monitoring is not necessary when methotrexate is used for medical abortions, where the pregnancy is known to be implanted in the womb and doctors may also prescribe a short of the antibiotic doxycycline to prevent an infection.

In rare instances when a pregnancy continues after the employment of those medications, there's a risk that the baby is going to be born deformed. the danger is bigger with the utilization of misoprostol. If the pregnancy tissue doesn't completely leave the body within fortnight of a medical abortion, or if a girl bleeds heavily, then an operation is also needed to complete the abortion. Approximately 2% to

three of ladies who have a medical abortion will must have a surgical operation, usually suction dilation and curettage (D and C), also called curettage.

A woman mustn't have a medical abortion if she: Is over 70 days pregnant (counted from the primary day of the last menstrual period), Has bleeding problems or is taking blood thinning medication, has chronic adrenal failure or is taking certain steroid medications, Cannot attend the medical visits necessary to make sure the abortion is completed, doesn't have access to emergency care, Has uncontrolled seizure disorder (for misoprostol). Has acute inflammatory bowel disease (for misoprostol).

Surgical abortion

Menstrual aspiration. This procedure, also called menstrual extraction or manual curettage, is completed within one to three weeks after a missed menstrual period. This method can also be acquainted with remove the remaining tissue of an incomplete miscarriage (also called a spontaneous abortion). A doctor inserts a small low, flexible tube into the uterus through the cervix and uses a handheld syringe to suction out the pregnancy material from inside the womb. local anaesthesia is often applied to the cervix to decrease the pain of dilating the cervix. anaesthesia numbs only the planet injected and you remain conscious. Medication given intravenously (into a vein) can lessen anxiety and also the body's general response to pain. Menstrual aspiration lasts a few quarter-hour or less.

Suction or aspiration abortion. Sometimes called a suction D & C (for dilation and curettage), this procedure is wrapped to 14 weeks after the first day of the last menstrual period. Suction D & C is that the procedure most typically wants to finish a pregnancy. One dose of antibiotics, usually doxycycline, is usually recommended before the procedure to prevent the infection. The cervix is dilated (widened) and a rigid hollow tube is inserted into the uterus. an electrical pump sucks out the contents of the uterus. the strategy takes a few quarter-hours. anaesthesia is usually applied to the cervix to cut back the pain of dilating the cervix. Medication given intravenously (into a vein) may help to decrease anxiety and relieve pain.

Dilation and curettage (D and C). in an exceedingly dilation and curettage, the cervix is dilated and instruments with sharp edges, called curettes, are familiar with remove the pregnancy tissue. Suction is often aware of ensuring all the contents of the uterus are removed. the earlier in pregnancy, this procedure is completed, the less the cervix must be dilated, which makes the procedure easier and safer.

Dilation and evacuation (D and E). this is often the foremost common procedure for ending a pregnancy between 14 and 21 weeks. it's just like a suction D and C but with larger instruments. The cervix must be dilated or stretched receptive to a size larger than required for a D and C. Suction is utilized along with forceps or other special instruments to substantiate all the pregnancy tissue is removed. The procedure takes longer than other abortion procedures.

Abdominal hysterotomy. this may be a heavy operation to urge obviate the foetus from the uterus through an incision within the abdomen. this may be rare but could even be necessary if a D and E can't be done. Anaesthesia will cause you to be unconscious for this surgery.

Risks involved: The risks of a medical abortion include infection, bleeding, and spontaneous abortion, meaning a number of pregnancy tissue remains. These problems are rare and might be treated. A miscarriage is handled by repeating the dose of medication to finish the pregnancy or doing a suction D and C. An infection may be treated with antibiotics. Excessive bleeding is treated with medications and possibly dilation and curettage. Rarely, an introduction could also be necessary if bleeding is unusually heavy.

The risks of surgical abortion are quite low. the most risks of D and C and D and E are continued bleeding, infection of the uterus (endometritis), incomplete removal of pregnancy tissue, and poking a hole within the womb (perforation of the uterus) during the surgical operation. A second surgical treatment is also required to get rid of tissue that wasn't removed during the primary procedure or to repair a perforated uterus.

Women rarely become infertile after an uncomplicated abortion. However, infertility may result when surgical abortion ends up in endometritis or is complicated by heavy bleeding, perforation or incomplete removal of pregnancy tissue.

NOW MOVING ON TO ABORTION LAWS AND ENFORCEMENT:

Abortion by definition is defined in a law by each nation however the enforcement is not adequate as the performing agency the hospitals and doctors deny abortion in cases of rape victims even though it is a right per se for an individual. Let's analyse how India and other countries sees abortion for rape. A women in the society is always under a threat as her body is seen as materialistic object for the opposite gender as a result women are raped for satisfactory purposes, however rape amounts even by marital cases, incest is a most common buzzword today mother son, daughter father, aunt nephew, brother sister, these family relationships mate with each other for their life's but when a difference and disagreement arises the consensual activity might be turned back as a rape. Besides this, prostitution the people do this as a work for livelihood naturally assent for sexual intercourse but

when the same prostitute is not in favour of the activity that period it amounts to rape by default but the police or the court doesn't understand the nature of activity is not agreed by both the parties. The police and judiciary treat these people very shabbily as they have negative opinion as the stature of prostitutes are always service in sexual activities. Therefore, the medical facilities are denied due to various reasons. Primarily the law in India is not adequate and we would say that it is outdated.

INDIA:

India's history goes back to ancient days as it has a number of stories about rape first in Mahabharata was molested by the guards at the time of her periods she pleaded like anything but the men in the hall they don't care about her pleadings her dress were stripped of in front of her husbands on that time it is highest form of rape. Anusha a rishi wife she was raped by the Indian god of thunder how he did means he changed her entire look as her husband and he raped that Anusha.

Abortion laws in India before 1975 abortion was not legalised section 312 of Indian Penal Code not in enforcement according to Hindu belief abortion is considered as immoral thing right to foetus which is mentioned in (Art 21 of Indian constitution) after 1975 Janata government constituted a committee called Shanta Rajan committee they drafted a bill called Medical Termination of Pregnancy Act, in this bill they mentioned and discussed about medical and legal way of termination of pregnancy and it became relief to the entire nation.

Besides the MTP, India has also passed several laws that recognize the right to health care for survivors of domestic and sexual violence. These include the Protection of Women from Domestic Violence Act (PWDVA) 2005, the Protection of Children from Sexual Offences Act (POCSO) 2012, and relevant clauses on sexual violence in the Criminal Law Amendment Act 2013. As a response to overwhelming evidence showing that India's health systems mistreat rape survivors, the latter two laws mandate that public and private hospitals provide immediate treatment for survivors of sexual violence. They also mandate punishment for failure to do so. The POCSO 2012 requires that all registered medical practitioners render emergency medical care to attend to the needs of children who have been raped, including access to abortion. That the immediate treatment for survivors of rape must include emergency contraception and abortion services has also been clearly mentioned in policy guidelines issued by the Ministry of Health and Family Welfare in Guidelines and Protocols for medico-legal care for survivors/victims of sexual violence. In reality, however, rape survivors who become pregnant, both girls and women, face procedural gaps and a range of barriers in accessing abortion services.

Further, will address the necessary steps to be taken for better enforce¹event of the laws before that let us see how termination of pregnancy for rape victims are provided in other countries.

Countries legalized abortion: In most countries there is no legalisation of abortion. But in some countries, they legalised abortion for normal women and rape victims the countries which legalised abortion of rape victims are -

1.Mexico

2.USA

3.Suda

4.Brazil

MEXICO:

In 1931 constitution of Mexico was written on that time itself feminist society of Mexico claimed that termination of pregnancy should become constitutional right after 14 years Mexico amended that abortion will become legalised in the city of Oaxaca in case mother has serious problem or the foetus not in a position to born that foetus can be aborted after 2008 supreme court of Mexico came with the judgement that abortion law should expand whole country with that judgement Mexico government made a changes in the amendment of 1991 abortion law to extend to the whole country with that they include woman who get pregnant due to rape and incest they also go for abortion

USA: in before 1973 general abortion considered as illegal land mark judgement provided by the supreme court of us in the case of (Rose vs Wade) made that abortion in united states even though some states of America opposed this because of political reasons proper abortion law came into force after the case of (Dolton vs Dolton) after this case abortion which is accepted by opposed states in the year of 2008 California court insulated some exception in law is that rape victims abortion court stated that if the rape victim feels that pregnancy is unnecessary especially teenage girls get pregnant at very easily on the ground of looking over their health condition rape victims can go for abortion

Sudan: In 1991, Sudan's² Islamist regime expanded the circumstances under which abortions are permitted within 90 days of conception to include rape. This reform has received great attention, especially given the rampant rape that occurred during the violent conflict in Darfur. Rape victims have been unable to take full advantage of this law, however, since a victim must overcome serious legal and practical hurdles in order to access an abortion. This became even more difficult after the

¹ <http://www.humanitarianstudies.no/2015/04/29/womens-right-to-abortion-after-rape-in-sudan-2/>

² <https://www.cmi.no/publications/5507-womens-right-to-abortion-after-rape-in-sudan>

International Criminal Court's 2009 indictment of President Bashir because Sudan expelled many of the humanitarian organizations, including Médecins Sans Frontiers, that were providing vital medical treatment after rape. The expulsions have caused a reduction in sexual violence protection programs, including the closing of medical centres and denying women the right to post rape medical care. Victims of rape in war struck Darfur often end up with an unwanted child and the lifelong stigma that entails or seek an illegal and unsafe abortion risking life threatening health complications

Brazil; In Brazil abortion is only legalised for rape victims only and it restricts normal abortion and also it permits the woman who feel the foetus is overweight and considered as unnecessary those victims only can go for abortion opposition parties recently made a claim to provide right to abortion every woman but their penal code of brazil restricted for normal abortion.

These above countries are forward looking societies where women rights are better established and given equal importance.

ANALYSIS ON INDIAN COURTS PRACTICES:

A minor rape victim was forced to give birth to the child of her rapist after the Madras High Court denied her request for abortion under the Medical Termination of Pregnancy Act of 1971. The victim was first examined by a doctor at 19 weeks, who declined to perform an abortion, even though it was permitted under the law. By the time her petition was heard, her pregnancy had crossed the 20-week limit beyond which abortion is prohibited under the Medical Termination of Pregnancy Act.³

A case featured in a September 28 report authored by lawyers Anubha Rastogi and Rayna Chandrashekhar of New Delhi-based Pratigya, an NGO that works to advance women's rights to safe abortion in India. Courts refused to allow minor rape victims an abortion in 17% of 82 cases between April 2016 and July 2019, the report said.⁴

³ **PADMA BHATE-DEOSTHALI, PHD AND SANGEETA REGE, 2019 DEC; 21(2): 189-198, DENIAL OF SAFE ABORTION TO SURVIVORS OF RAPE IN INDIA**

⁴ Nushaiba Iqbal (Healthcheck.in), 2019 Dec., <https://scroll.in/article/941210/the-abortion-law-in-india-is-failing-the-women-who-need-it-the-most>

Even though the Medical Termination of Pregnancy Act allows abortion until 20 weeks, 40 petitions seeking to terminate pregnancies under 20 weeks had to be filed in courts around the country between April 2016 and July 2019 because doctors refused to perform them. As many as 33 of these cases were filed by rape victims. “By not allowing women access to safe abortion, you are leaving women with two choices: death (due to unsafe and illegal abortions) or the psychological and emotional consequences of a pregnancy they were not prepared for,” said Anand Pawar, executive director of Samyak, a Pune-based advocacy group that works for sexual and reproductive health rights of women in Maharashtra and Rajasthan.

The lack of clarity in the outdated act, along with lack of awareness of the law among women and doctors, limits women’s access to safe abortions, the report found. Further, doctors refuse abortions citing the law preventing sex-selective abortion, and legal processes in the case of child sexual abuse, even though neither of these laws restrict abortion. Delays in court decisions on abortions and the stigma around abortion also endanger women’s health, the report said. As a result, 56% of abortions performed in India are unsafe, with 10 women dying of unsafe abortions each day, as India Spend reported in November 2017.⁵

The authors had an interaction with a gynaecologist a known person in the field.

So, the doctor was, was telling about two of her patients who wanted abortion due to a harassment from the husband who was drunkard and other one is marital rape as they wanted to settle down in life first and create a family. Both the women approached were tortured sexually in above means and they approached the Rd. as she is known to them, as a medical petitioner she said it is possible to abort but I need consent from your parents, or husband, or at least an NOC from husband and a complaint for marital rape from the police. So, going through the procedures is a legal manner else nothing can be done. Please get help and get it down within 45 days else the abortion will not be possible as your life will be at risk. Both the women tried their level best but nothing happened and

⁵ Akshi Chwla, 2010 Sept 1, <https://www.indiaspend.com/why-243-women-girls-had-to-ask-a-court-for-permission-to-abort/>

slowly they were mentally upset and had no other choice to accept the fate and wait till birth is given.

So, the interaction we learnt and understand that the right to abort should be vested right and women protection should be upgraded by legislations, rules and regulations by medical board to give freedom and powers to doctors to help the victims to abort and save their life's. Medico legal services should be there in every hospital for such issues where legal action is required for any action that to be taken,

RIGHT TO LIFE ART 21: our Indian constitution has in art 21sub (b) right to life of foetus in the mother's womb which talks about foetus in the mother's womb has a right to born in this world.in view of that our Indian government is not permitting a rape victim to go for abortion in another view Indian government want to protect the foetus but what about the condition of the rape victim mother

CONDITION FACED BY RAPE VICTIM IN INDIA: As per the 2019 report 2709 major age women were get raped and minor age girls less than 21 years of age 4940 girls were raped many of the girls were died by the brutal assault of the rapist so the victims facing heinous situations many of the rape victims were not in a position to take legal remedies they are fearing and worrying about their modesty these things should be vanished from the Indian society one delightful thing happened in the year of 2013 Rajasthan high court quashed district court order passed against minor girl for abortion but the high court took serious cognisance in this issue allowed that minor girl to go for abortion in that judgement what they stated is .since girl is not in a mental capacity of carry the foetus it overweighs to her in view of her health condition court allowed her to go for abortion .this is a historic judgement given by the honourable high court of Rajasthan

In some cases, pregnancy happened during pre-marital relationship by some women what those women are doing is they gave birth to that child and later point of time those babies admitted to orphanages by their own mother mentioning those babies as unanimous children referred by their own mother. this thing is not happening today way back 1000 years before kunti Devi mother of pandavas happened to her why because in order to protect her modesty. Indian women are more concerned about modesty so only these things are happening but they are not considering about

future of the children those children were brought up and labelled as orphan by the society many of the children were indulged in social evil activities their fortune become million-dollar question

How this can become a law : in order to avoid unnecessary pregnancy the Indian government should bring separate legislation for rape victims which permit them to go for abortion with in article 21 the policy makers should insulate sub (c) a special right for a rape victim allows for abortion first priority given to minor age children because they will not be stable health wise to experience labour pain and take the pressure of taking care of her health and child, The government of India can consider Rajasthan judgement as a precedence to amend this as an act it should come under the purview of (MTPT ACT) abortion of rape victims should be done with experienced medial practitioner and details of the rape victim should be protected this should be frame by medical council of India(MCI)

Benefits from the law: The act will set the enforcement agencies and Indian judiciary for prosecution and grant justice to the victim and punish the culprit without too much of delay.

Here after, children should not be labelled as rape victim's child; Population of orphan children will get reduced; Women modesty get protected; Every woman in the country will not have fear about their future; Modesty of minor age girl children will get protected; Avoid life losses of innocent women.

CONCLUSION

The act should be amended to make abortion available to all women regardless of marital status and age, up until 12 weeks after conception. The limit of legal abortion should be extended to 24 weeks, since abortions until that stage are safe, and the limit should not apply in cases of rape and foetal anomalies. We also recommend that their government opens up a portal or an interface where abortion is centralised and transparency in the process, especially police and courts should be under the mechanism in where each case when registered by the victim by various grounds, within 2-4hrs the nearest hospital should test the victim's body and submit the reports in the portal for approval. The courts in serious cases for rape which is a criminal offence that should be handled in a rapid force, hearings should be within a week from the case registered and should examine the victim with a medical officer for the nature of the pregnancy and victims request plus various grounds for safe abortion should be initiated soon from a medical stance to clear the womb but legal course continue until the remedy is for the victim. The law should be amended, rules and procedures should be laid centrally from the health ministry that binds on all states where a central mechanism is in place to protect the women for abortion in rape cases especially in minor girls as they are ones more vulnerable to any possible aftermath of the incidence. Therefore, we submit that women laws and protection should be not only in papers but legislated and enforced to betterment of women.