



The Abortion rights in Indian culture

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Abstract

It is fact that all women, whether married or not, have equal rights to access abortion in compliance with the provisions of the Medical Termination of Pregnancy laws prevailing in the nation to nation. Further, on the advice of medical practitioner in certain specific cases, e.g., minors, pregnancies resulting from rape, women experiencing changes in marital status, women with certain mental / physical disabilities, fatal malformation, or pregnancies in emergency situations. Indian constitution directs Government for significant step forward for women's rights, however, abortion access faces certain restrictions.

The key point involves that if women do not want to carry the pregnancy to term for several reasons including social stigma, financial constraints, and risk of strain to her mental health the law to that extent allow to abortion and thus pregnancy related rules purposively to hold that the legislature did not intend to distinguish between married and unmarried women. A narrow interpretation, limited only to married women, would render the law discriminatory towards unmarried women and violate their fundamental right to equality. Not only did the legislature extend protection to unmarried women, but it also liberalized access to abortion to married women who become pregnant as a result of marital rape. There should be protections regarding abortion access for minors and need not disclose the identity of the minor in certain reporting requirements to authorities, on request of the minor and guardian and thus it should recognize that reproductive and decisional autonomy are essential to the realization of fundamental human rights.

Since the right of every woman to make reproductive choices without undue interference from the state is central to the idea of human dignity. Deprivation of access to reproductive healthcare or emotional and physical wellbeing also injures the dignity of women and likewise reproductive rights to include not only the right of choice but also a constellation of other rights – the right to access education and information about contraception, the right to access safe and legal abortions, and the right to reproductive health care.

There should be advancement in the progressive liberalization of abortion law in India, earlier, abortion was criminalized in India. This compelled women to seek unsafe and unregulated abortions.

Despite the laws, unregulated and unsafe abortions continued in great numbers. Terminating pregnancies prior to 12 weeks proved to be difficult for several reasons, including lack of awareness of the pregnancy, social stigma, hesitancy, and discovery of fatal abnormalities at a later point. Further, lack of doctors and resources, especially in rural areas, were practical obstacles for abortions between 12 to 20 weeks.

Apart from abortion, legal norms have been changing favourably over time for women. For instance, welfare legislation such as maternity benefits, certain religious succession laws, and adoption laws do not distinguish between married and unmarried women. Taken together, these laws and the recent court ruling signify that all women have decisional autonomy to make significant choices regarding their body and their welfare.

However, true realization of such autonomy will depend on material, social, and cultural changes. India has historically been a patriarchal society. Male values dominate and regulate personal, social, and economic spheres of life and living. In fact, India has a historic cultural preference for sons over daughters, leading to selective abortion of female



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foetuses. To curb this practice, India has strict laws that prohibit sex selective abortion and criminalize female feticide. But pernicious social and cultural norms continue to restrict women from realizing their full potential and from having aspirations beyond marriage. Further, pre-marital relationships are often frowned upon or characterised as “illicit,” and pre-marital sex is taboo.

Apart from social changes, resource constraints limit access to health care facilities. In a country where many live below the poverty line, increasing access to health care facilities and medical practitioners is a material consideration for true equality and freedom. However, still need some improvements in social, cultural, and infrastructural changes as well.

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