

# Abortion As A Human Right

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As per the recent judgment of the Supreme Court in the case of *X. v. The Principal Secretary, Health and Family Welfare Department, Government of National Capital Territory of Delhi and Another*, the court held that all women, irrespective of their marital status and gender identity such those that do not identify as cis-gender women, possess an equal right to abortion.

There is a need to understand the right to abortion as a human right. The question that arises is, how to implement the equal right recognised by the Supreme Court in cases involving heinous crimes like rape, or foetal impairment, and based on specific situations based on social and economic discrimination suffered by the women and in general based on personal choice?

What constitutes the existing standards at the regional and international levels supporting the women's human right to abortion along with the possible way forward regarding the state procedural obligations, particularly with respect to women's right to access abortion?

The right to abortion traces its basis substantially to the right to be free from cruel, inhuman, and degrading treatment recognised under International Covenant on Civil and Political Rights (ICCPR). However, the promotion of women's reproductive rights gained

momentum at the International Conference on Population and Development (ICPD), held in 1994 in Cairo, Egypt, and then in 1995, when the Fourth World Conference on Women took place in Beijing, China.

These events emphasised the need for abortion as a human right for women stressing the importance of women's reproductive rights to be recognised as human rights. Post-1995, an increased awareness has been seen among the masses that demand the governments take steps to prevent the consequences of abortion carried out in an unsafe manner on women's health and strengthen their commitment towards women's health.

There is a need to spread awareness by establishing the significance of family-planning and disseminating such information through mass campaigns and counselling. In this light, recognising the equal right to abortion is a laudable step but to further strengthen it, we require to reflect on various dimensions attached to the life of women from a human rights perspective under various regional and international human rights treaties and conventions.

Article 6(1) of the ICCPR emphasises the significance of the right to life which is an inherent right of every human being. Further, the covenant also requires that States Parties put forth information on all steps and measures taken with an aim to prevent forced and unwanted pregnancies while taking measures to avoid life-threatening abortions while reporting on the matters protected under the right to life as guaranteed by Article 6. This assumes particular significance in the Indian context.

In a similar vein, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 stresses the need to drastically reduce the incidents of maternal mortality that can be traced to illegal and unsafe abortions. The justification cited is the right to health is fundamental to the well-being of a person including physical and mental health.

The 'highest attainable health' under Article 12 of ICESCR consists of both the individual's biological and socio-economic determinants of health including reproductive health.

The International Convention on the Elimination of all Forms of Discrimination Against Women 1979 (CEDAW) also addresses the issues concerning abortion and its impact on the right to life and health of women. Ultimately, it recognises women's equality under its General Recommendation No. 24 on women and health and has held that the state is duty-bound to provide legal services that facilitate abortions in a safe manner.

Coming to the girl child, Article 6 of the International Convention on the Rights of the Child 1989 (CRC), seeks to protect children's right to life and survival. The CRC emphasises on the issues of adolescent girls' inability to access abortion services and the need for state parties to take steps in this regard.

It also urges States Parties to provide safe abortion services where abortion is not against the law like the situation now in India after the recent judgment. In this regard, the CRC has specifically recommended that a state party should consider the adverse impact of

early pregnancy and illegal abortion on the health of the girl child which has been seen as a taboo in our society and impacts the girl child being exposed based on adversities and day-to-day stressors.

Even though the Supreme Court reaffirmed safe and legal termination of pregnancy as a welcome step when the landmark decision of Roe vs Wade was overturned in the United States giving a serious blow to women's constitutional right to abortion. Yet many feminist scholars see legalised abortion not as an expression of free choice but as a continuous struggle to uphold reproductive freedom in a largely patriarchal society like India where such laws and regulations tend to interfere in women's right to privacy, and reproductive autonomy and may tend to oppress women by regulating their sexuality.

Despite the Supreme court order, women especially the ones having an unwanted pregnancy are more vulnerable and they continue to face various structural and other barriers to accessing safe abortion, particularly in rural areas where the institutional lacunae have not been accounted for regarding the access to safe abortion.

The fact that rape victims may not be able to approach a medical board regarding the termination of pregnancy beyond 24 weeks as it is allowed only in case of substantial foetal abnormalities only undermines reproductive choice even though bodies like WHO do not specify any maximum time frame after which the termination of the pregnancy cannot take place.

Many countries in the West allow abortion at will even though this is not the case in India where there are various conditions to be satisfied. Some of them also involve executive overreach and some cases require judicial determination by way of writ which may sometimes be influenced by the conservative pro-life ideology

One of the possible solutions to ensuring that the State follows the mandate of the judgment and the various human rights provisions reflected in this article is to see what kind of practices are followed around the world from a comparative perspective. Looking to the west, the protection of right to life under Article 2 of the European Convention on Human Rights (ECHR) may prove to be useful, as it obligates the state parties to do away with any steps that intentionally interfere with the right to life of an individual.

As to the procedural obligations, Article 2 requires the Member States to instigate investigations to understand the reasons for death if any, and in the relation to health care, the onus is on healthcare and medical institutions to determine the cause of death to impose civil and criminal liability.

Does the question remain whether the women in India, including transgenders, can access the right to abortion as a human right as per the highest attainable standard of health as laid down by the international covenants after the recent progressive approach taken by the Supreme Court?

Even though the judgment shows a progressive interpretation of the abortion laws and show a real commitment to protecting the constitutional ideals of equality and bodily autonomy, yet it is difficult to answer the above question in the affirmative as the State is unable to fulfill its duty to ensure access to free and affordable abortion to all in the light of the structural barriers, cultural stigmas and biases and due to lack of overall healthcare infrastructure particularly in rural areas.

The need of the hour is for the Government to think about how to practically ensure the right to abortion for women and fulfill its duty under Article 51 A(e) of the Constitution which deals with renouncing practices that are derogatory to the dignity of women.

**Abhinav Mehrotra is an Assistant Professor, and Prof. AMIT UPADHYAY is an Associate Professor, at the OP Jindal Global University.**