

MTP ACT AND ABORTIONS IN HIMACHAL PRADESH: SOME OBSERVATIONS

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ABSTRACT

Medical Termination of pregnancy, popularly called abortion implies expulsion of fetus during first 12 to 28 weeks of pregnancy. Though an intentional act of a women in which the consent of spouse may or may not be involved, has historically been a highly controversial issue. The controversies revolve around the juxtaposed positions held by the society. These emanated from the realm of religion and humanism on the one hand and the legal and health frame work of a society on the other. The third issue that has become the centre of focus by the feminists is the question of women's right. The latter itself has raised many issues of social and legal nature, especially in the wake of rising number of abortions all over the world, especially the ones conducted under unsafe conditions and that of the unwed and the teenage girls. In view of the emerging divergent concerns, this paper inquiries into the nature of society's response to abortion in historical perspective, and the causes and conditions of abortion world-wide. The last part presents the implications of abortion for the society at large in the form of conclusions.

Keywords: MTP, Women, Society, Feminists, Right

INTRODUCTION

Historically, during nineteenth century, abortion was considered an undesirable act. It was believed to be against the nature and a criminal act amounting to homicide. This was particularly the case of countries having pre dominantly Roman Catholic. Hindu and Muslim population (EI-Kammash: 1971) Since the society took cognizance of such an act the punishment imposed was excommunication of the person from the community. There could not be more severe punishment as excommunication meant not only social and economic but also emotional and sensory deprivation. This was due to the fact that kinship and community bonds were vital in the life of an individual. Once devoid of the community membership the individual's existence become difficult. This was the reason that abortion continued to be a common social and legal misdeed even till the beginning of the 19th century. It was punishable under two conditions: (i) abortion after quacking; and (ii) abortion during gestation. The first implied abortion after 40 days in case of male and 80 days for the female fetus (Paiewonsky: 1988 cited in United Nations:

1992). Cook and Dickens (1979) state that a woman who carried or attempted to carry her own miscarriage could be punished for life imprisonment. Francone (1988) mentions that not only the person carrying out the abortion but even a person who supplied any instrument or any substances such as poisons for abortion was held guilty. But in certain compulsive conditions, argue Klass and Raisback (1973) the society did act in a more rational manner towards abortion. It was accorded social and legal sanctity when a rape of a minor girl resulted in pregnancy or pregnant women had risk to life or was not in good health to carry the child and deliver a healthy baby (emphasis mine). In other words, the social structure for the management of crisis situations evolved certain mechanisms and played protective roles in two ways. First, by way of abortion it prevented the birth of an unwanted child and protected the raped minor from becoming a stigmatized personality in the community. Second, it prevented female mortality as well as birth of an unhealthy child.

The other side of the issue of abortion is its legalization and acceptance in the society. But it was neither sudden nor absolute but a gradual development, the antecedents of which can be traced from the 19th century social and economic development in the Europe and North America where considerable innovations were made in the areas of medicines and health. The process of colonization facilitated diffusion of knowledge of medical sciences as well as the technologies to deal with high risk health issues in other parts of the world as well. The influence of all the said developments was also felt in the social sphere. The social mobility caused by economic development first of all displaced and consequently relocated the individual, weakened community control over the individual made social structure somewhat fluid and open. Subsequently change in the way of life coupled with attitudinal and value changes came about in the social spheres.

Among the many areas affected by the socio-economic mobility, one also pertained to change in the marriage patterns (Tumin: 1987, 133). This is a fact that in the process of change the occupational mobility also induced value of downsizing the family in the western world. The question of wanted and unwanted pregnancy linked with growing economic rationality made the States to legalise abortion. Consequently, the laws were enacted in different countries from time to time and accorded abortion a legal status. In the contemporary times, barring a few exceptions 97.92 percent of the countries of the world have rationalized abortion on various grounds. The classification of countries in terms of their development levels indicates that 96 percent of the developed countries and as many as 98.62 percent accords of the undeveloped countries permit abortion on health ground (United Nations: 1999).

At this juncture, one needs to mention some hidden linkages between feminism, abortion right and consequent controversies. Feminist movement date back to 1789 in France, 1972 in United States, 1866 in Britain, and so on. Beside the equality concerns in social and economic spheres ,

the women have asked for availability of abortion facility in United States in the 1960s (Giddens: 1993, 185). Consequently, the abortion became legal in United States. Even in Britain, the women's movements played an important role in passing of the 1967 Abortion Act. But the matters concerning abortion have proved highly controversial among women as well as men (Gidens: 1993, 326). Nevertheless, it is important to note that controversies about abolitions even among the women have been due to the feeling of immorality arising out of religious considerations. The Alan Guttmacher Institute, New York (1999, 6) observed.

"Religion affiliation is one of the most inflammation factors in fueling the debate and controversies over the issue of abortion around the world. Indeed, some major religions condemn such practices. Furthermore, religious views and considerations of reproductive rights and health is not the only base for either individual altitudes towards abortion or government policy and regulations concerning the demographic process. In few countries, with highly centralized and usually authoritarian administration or rule the abortion policy has sometimes been used to advance overall cultural, eugenic and demographic aims and imperatives."

C wright Mills reflecting upon the ambivalence in human nature argues that the people in general are caught up in various sides of social issue under consideration. Some are in favour and others in opposition of it. Abortion (Medical Termination of Pregnancy) is one of such issues that involve not only the question of women's rights or health risks but also religion and morality considerations. This is the reason that it has received considerable attention both in terms of opposition as well as favour. The controversies thus are the reflections of social structure and the culture of a society concerned.

Despite the controversies the global review of abortion policies reveals that barring a few countries, all other permit abortion in the contemporary times. The statistics at the global level indicate an estimated 46 million woman live in countries with liberal abortion laws and 20 million live in those countries where abortion is restricted by law. On an average, 35 of every one thousand woman in the childbearing age have an abortion each year. The rates vary between minimum of 10 in some countries to around 80 in others. Despite variations in the legal status of abortion in the developed and the developing regions, the overall rates are quite similar with 39 and 34 abortion per 1,000 woman respectively. In the Eastern European countries, in comparison to other countries and regions, the abortion rates are highest whereas Western Europe has the lowest rates (AGI: 1990, 25).

The regional variations indicate 11 percent of women having abortion live in Africa, 58 percent in Asia and 9 percent in Latin America. In Europe, 17 percent of women have abortion. In the developed countries, including Australia, Canada, Japan, New Zealand and the United States only 5 percent woman have abortion. The divisions into legal and illegal abortions reveal that

almost half of the legal abortions occur in East Asia, China, Hong Kong and the South Koera. In rest of Asia 17 percent of the legal abortions take place. In contrast to this, half of all women undergoing illegal abortion live in Asia, 25 percent in Africa, 20 percent in Latin America and the remaining 5 percent mainly in Eastern Europe (AGI: 1990, 25). The abortion rate in India has been 2.7 percent (1995-96), 41 / 37 among the contraceptive users in the 13 to 49 years of age. The mortality rate has been found 570 per 1,00,000 live births (United Nations: 1999). Despite the fact that abortions have been legally permitted in almost all the countries of the world, quite a high percentage of illegal abortions are conducted all over the world every year. This is an indication of the fact that most of such abortion seekers are either teenage girls or unwed who do not want to have the child.

The global survey of abortion policies carried out by United Nations Population Division in the recent past (1999) indicates that barring a few countries, rest of the world legally permit abortion in the contemporary times. Where a country is not legally permitting abortions, their abortion is permitted in case the pregnancy is threatening the life of the women. The causes and conditions vary from country to country. Among all the countries 97.62 percent permit abortion when there is risk to the life of the women. Among the developed countries 96 percent whereas in the less developed countries as many as 98.62 percent accord the permission. The only exception is of Andorra that prohibits abortion on any ground. The general interpretation of risk to life refers to that condition which threatened the life of the woman. Such a condition is justified as 'defense of necessity' to save the life of the pregnant woman. This is the single most reason over which majority of the countries developed as well less developed, have more less complete consensus.

The other major grounds of legal permission to abortion are preserving the physical health (63.21 percent, 87.5 developed and 55.14 less developed) and mental health (62.17 percent, 85.41 developed and 54.48 less developed) of the woman. In the case of developed and less developed countries, the differences are highly significant. However, the problem involved in these two grounds of abortions is to identify what constitutes the risk to physical and mental health. The explanations differ from country to country. The narrow explanation of the physical health pertains to anything that might cause injury to the women's physical health if the pregnancy is continued. The mental health explanation is more definitive. It ranges between psychological distress when the pregnancy is either untimely and the women is not mentally prepared, or caused by undesirable act like rape, incest violation or in doctor's view the mental state of the pregnant women might impair the foetus mentally and physically. In a judgment the commonwealth Law (Rex v Bourne case) made it clear that an abortion could be performed to safeguard the physical health of the pregnant woman and in order to prevent her from "becoming a mental week" (United Nations :1999):

The other considerations emerge from the social structure of the society. There are certain conditions with which the society attaches a stigma. These are violation of incest and rape. It is important to note that the societies where abortion is not legally permitted. It is allowed to the victims of incest and rape. Such societies tend to defend the honor of pregnant women or when the pregnancy is caused by sexual violence. It is found that only 43 percent of the countries permit abortion on these grounds whereas the remaining 57 percent prohibit abortion irrespective of the reason. The development differentials in this regard indicate that among the developed countries 81.25 percent permit abortion whereas in the less developed countries only 30.34 percent countries give permission. In fact there is a wide gap between the developed and less developed countries, abortion policies. In a countries like Syria, defending the honor of the women becomes a basis for reduced sentence as punishment. Why the less developed countries in majority number do not accord permission perhaps is due to the conservative nature of the social structure.

The economic and social reasons account for permission only in 32.64 percent cases all over the world. Among the developed countries as many as 75 percent permit abortions where as in the less develop countries only 18.62 percent countries permit abortions on social and economic grounds. This distinction indicates that the developed countries are more liberal than the less developed. Among the reasons, varying from country to country, are the age of the women, her economic conditions i.e. affordability, the foreseeable environment for the child etc. The social and economic grounds seem to be the rational decision-making about bringing the child to the world abort it.

The abortion as a matter of women's right empowers her to terminate her pregnancy at will and make her right in this context absolute. By implication, a woman can decide to go for abortion at any point of time during the period of her pregnancy without informing even her husband if she is married or her parents if she is unmarried. This is termed as abortion on request. But there are only 26.94 percent countries permitting abortion as a matter of women's right. Among the developed nations their number is 64.58 percent whereas the less developed account only for 14.48 percent. In other words on request abortion is permitted more in the developed countries in comparison to less developed countries. Even there are visible differences too. While in Singapore, Sweden and Tunisia one does not need to give any justification for abortion. In Hungary a woman seeking 'abortion at will' must compulsorily consult a nurse.

The experiences of legally permitted abortion in some countries has shown argumentation of wrong practice through induced abortions. The use of coercive induced abortion as an alternative strategy for the birth control in China has led to the slaughter of innocents (Aird: 1990). This sort of slaughtering also indicates prevention of women from exercising their reproductive rights. Moreover it also links the abortion issue with the socio-political processes which shape,

formulate and implement population policy in a country. Besides the States imposition, in a country like India this sort of slaughtering is carried out at the instance of some people's desire to beget a son. In the process the sex determination tests conducted at private clinics let the couple know about the sex of the child. Those desirous of begetting a son get the foetus terminated. In brief, the social values governing the sex preferences are also proving as the abortion facilitators.. Thought termination of foetus is declared immoral and against the will of God by many social, religious and political organizations, yet the number of such cases is on the rise in India. The situation is alarming particularly in the state of Punjab, Haryana, Himachal Pradesh, Gujarat, Maharashtra, Uttaranchal et. The state of Haryana is the most effect by the female feticide (Dived: 2001, 6)

What happen to a society when a large number of abortions are conducted? This is a very difficult question as abortion itself has different implications under different conditions. The objective of each State is to protect the life of its citizens. The liberalisation of abortion policy in many countries of the world in the initial stages was in line with the objectives of safety of life. This is the reason that global review of abortion policy by the United Nations also reveals that almost all the countries view women's life precious and therefore allow abortion when pregnancy becomes a risk to women's life. Under such a situation, abortion acts as a functional imperative to the society as well as the individual in two ways. First, it prevents the female mortality by saving the life of the women. Second, it prevented the birth of a sick or unhealthy baby and thus prevents the future problem.

The other reasons having the similar functions are abortion for the preserving of physical and merital health of the women. Although the determination of what constitutes the good health of a female is difficult, yet the two are significant not form the point of view of individual alone but also from the point of view of the society at large. There are no two opinions about the fact that a physically and mentally healthy woman is an asset to the society for the future. The abortion due to physical and mental health is justified.

The state laws in almost one third of the countries grant permission for abortion on the reasons of rape, fetal, impairment and economic and social reasons. The number of countries granting permission for abortion on request is almost one fourth of the total. It is understandable that the victims of rape by undergoing MTP can avoid the social stigma often attached to a person giving birth to an illegitimate child. This is also significant with particular reference to the problems that the society faces with the growing number of single parent families in the developed countries. Such a provision can prove can provide some respite to the women who had child due to rape. But only one third of the countries permitting this also to implies that women need to be more careful about their own well being. This may also be due to the fact that "rape is difficult to assess with accuracy. The trial process itself is intimidating. In such a situation the women's

previous history is investigated during the interrogation process whereas no one bothers about the previous history of the man accused of rape" (Giddens: 1993). It is perhaps due to the fact that despite the changes taking place the patriarchy remains powerful and that is the reason rape as a ground for abortion is not accorded importance in more than two-third countries of the world. This has severe implications for the women victims as well as others.

Similarly, a relatively smaller number of countries allow abortion due to foetal impairment. It is due to the fact that most less developed countries lack the technology of assessing foetus health or some other reason dominates. But the problems due to impaired foetus that can be foreseen is two-fold: first, the impaired foetus results in high mortality; second, the birth of underweight and physically and mentally impaired child. What cost a society bears due to the said problem requires to be assessed in a long term perspective. The same also holds true in the case of economic and social reasons of seeking abortion. In other words, permission for abortion can be considered an encouragement to economic rationality in carrying the child or not to carry the child till delivery. But non-permission can mean discouraging economic rationality. In both ways the issue of abortion on economic and social reasons is polemical in nature.

Lastly, abortion on request is a debatable issue with particular reference to the increasing number of foetal destruction. This has severe implications in terms of sex ratio. The situation of non availability of girls for marriages will encourage the revival of institution of polyandry and thus undermining the status of women. Such a situation will undoubtedly encourage crime against women, particularly sexual violence, rape etc. In view of which the State must come out with a policy. The legislation does not work till the people themselves start adhering to its provisions. The onus also lies on the woman themselves. The question before them is: Should they destroy their own sex?

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