MTP ACT @50- A Move on the 'Right' Track

Spotlight Series: Webinar 4

MTP Act- The more things change, the more they stay the same

9th November 2021

A Brief

Background

Abortion has been legal in India since the enactment of the Medical Termination of Pregnancy Act (1971) under a range of conditions. This was considered to be a progressive law giving provision for women to terminate an unintended pregnancy legally and safely. Concerted efforts by the government, professional bodies, researchers, abortion service providers and activists have resulted in amendments to the Act in 2002 and more recently in 2021. The efforts have been directed to make safe and legal abortion accessible and available to women thereby reducing unsafe abortion.

The most recent amendments of 2021 aim to enhance safe abortion reach to larger number of service seekers. These amendments removed the word "married" and replaced "husband" with "partner"; single provider approval for abortion upto 20 weeks gestation; extension of gestational limit to 24 weeks for those with certain vulnerabilities as defined by the rules and regulations and unlimited gestation limit for terminating pregnancy with fetal abnormalities with approval from a medical board.

However, though in the right direction, there are questions that remain unanswered, particularly around women's rights to demand abortion, does it really shift the power from the provider to the woman and the challenges women continue to face in seeking legal and safe abortion.

These issues were deliberated upon in the fourth of the six Spotlight series convened by the Family Planning Association India (FPAI) in partnership with twelve partners1. The previous three webinars deliberated upon the 2021 Amendments; system and provider readiness required to translate the amendments into rights based access to legal and safe abortion and use of data and evidence to provide evidence based programmatic direction.

The fourth webinar addressed issues around whether safe abortion is a woman's right and where is this right within the abortion dialogue among different stakeholders including trans men and persons with disabilities. This webinar also discussed the findings of two studies aimed at understanding the barriers and challenges faced by women including within the context of recent COVID 19 epidemic. The panellists shared insights on gaps in the 2021 Amendments and suggested ways forward. This brief provides the gist of the discussions in the fourth webinar.

Barriers and challenges in accessing legal and safe abortion services

Understanding the complex matrix of vulnerabilities and denials: Women continue to face barriers and challenges and these were exacerbated during the recent COVID 19 pandemic. Findings from the two research studies undertaken recently by members of CommonHealth highlight the barriers at four intertwined levels:

[1] CommonHealth, FOGSI, FRSH India, Global Health Strategies, IIPS (International Institute of Population Studies), Ipas Development Foundation (IDF), Love Matters, MASUM, Parivar Seva Sanstha, PHSI, Population Council and Pratigya campaign.

Culture of silence around abortion prevents the woman from articulating a desire to terminate a pregnancy due to deep rooted stigma and taboo around abortion. Unplanned pregnancies are a result of lack of awareness about contraception or autonomy to use it, changing economic or social conditions, rape, violence or coercion. A woman facing an unintended pregnancy can not talk about termination either with the family or decision makers largely due to the societal pressure for child bearing, particularly a son in the case of married women who have to prove their fertility. Vulnerable women, including commercial sex workers or survivors of violence and rape are more at risk of unsafe abortion. Compounding these barriers is the lack of awareness about the legality of abortion and facilities that offer legal abortion, non-availability of services, women's perceptions about the quality of services on one hand and on the other distance and cost and unaffordability of accessing safe and legal services.

Limited autonomy and social marginalisation include limited support from the family or peers, particularly if the decision is of the woman alone and she is seen as committing a sin. For the vulnerable including unmarried, dalits and commercial sex workers, decision to approach legal providers for termination is fraught with insults and humiliation by the provider. Access to safe and legal services is further controlled by the current narrative in the country which limits women's control over their bodies; restricts their mobility; controls their dress code, interactions and decision making.

Unintended pregnancy was viewed by men who were interviewed (the PRI members, community leaders) as completely within the power of the woman and to terminate an unintended pregnancy, was not seen as justifiable means of dealing with it.

Judgmental providers' attitudes negatively impact abortion access for women. The medical curriculum focuses on clinical aspects of health care with a minimal focus on rights and choice. Added to that are their own beliefs and values which governs the way they view women coming in for abortion. Current legal scenario is yet another area of concern as sting operations conducted under Mukhbir Yojna and other schemes under PCPNDT Act has created a fear among the providers about legal requirements and often services are denied to women, especially second trimester abortion.

COVID 19 resulted in loss of income, increased vulnerability of women, increased sexual violence. Services were focused on the pandemic and women in need, especially the marginalized and vulnerable women, were forced to either continue the pregnancy or resort to home remedies and quacks or pay exorbitant price to private providers for abortion.

Abortion pathway: The denial and delay in services, fear of societal repercussions, judgemental attitude of providers, coercion for contraption or forced continuation of a pregnancy are reasons for a woman not accessing legal abortion services as a first option. Upon recognition of a pregnancy, the first choice of a woman is to access medical abortion drugs from the pharmacy either by herself or through her partner/ husband for reasons of confidentiality. The second choice is private facilities because of perceived good quality of services provided the cost is affordable. The third choice is accessing public facility due to poverty, failure of medical abortion or incomplete abortion. However, each of these choices are dependent on availability, affordability and third party consent (husband/partner/relative).

Unanswered questions in 2021 Amendments: Not much seems to have changed over the decades.

Questions around rights within the MTP Act remain unanswered even after decades. Responding to these questions and gaps will go a long way in making safe and legal abortion a woman's right.

Abortion continues to be a criminal offense: The Indian Penal Code (IPC) sections 312-316 say that anybody who causes a wilful abortion is punishable. The MTP Act was brought in response to these sections because if abortion is a punishable offence, certain caveats/conditions needed to be put in place to protect both the abortion provider and the woman undergoing abortion. Over the decades, the Amendments or the dialogue around abortion has not adequately addressed the need to decriminalise abortion thereby making it a rights framework.

Provider is supreme decision maker: The 2021 amendments removed marital status and enabled unmarried women to access abortion services. However, a woman cannot decide for herself whether she fulfils any of the conditions as laid out in the Act – it is left up to the doctors or even the court as seen in recent years. The Amendments have increased the gestation age to 24 weeks for special categories of women provided a medical board authorises it. The question arises on what happens when two doctors are in conflict about whether a termination should be permitted or not and the ensuing delay that will impact the woman or the young person. This is particularly relevant for pregnancies as a result of sexual assault and the ensuing trauma that the woman may face if denied abortion. By limiting extension of gestation age up to 24 weeks for certain categories of special women, whose agenda is being advanced? Why cannot this be universal?

It leaves the decision-making to the provider because there are certain conditions only, under which a person can seek a medical termination of pregnancy… and worse now it has also become an issue for the courts to decide

Missing conversation inclusion: The Amendments continue to use the word "woman" thereby excluding trans-men/ third gender and the trauma they may face if they conceive and want a termination. By including women with disabilities in the special category of women and clubbing them with survivors of sexual assault and minors indicates that they are viewed as having no autonomy or decision making ability by virtue of them being disabled and thereby need greater consideration around abortion access as compared to non-disabled women. The current amendments are not aligned with the language of the new The Rights of Persons with Disabilities Act (2016) or the Mental Health Care Act (2017).

Women with disabilities have always been infantilized, having no autonomy, decision-making power or any agency on their lives or their bodies. Grouping us together with minors and survivors of violence, almost as if pregnancy of disabled women is a negative experience

Conflation between MTP Act and Protection of Children from Sexual Offences (POCSO) Act and Pre-Conception and Pre Natal Diagnostic Techniques (PCPNDT) Act: Archaic stipulations under the MTP Act affects access affected, particularly in hard to reach geographic areas, including rural and tribal and for marginalized and vulnerable women. Conflation between the MTP Act and the PCPNDT Act and POCSO Act further aggravates the situation often forcing women and young girls to access unsafe and illegal services. The POCSO Act stipulates that if a minor below 18 years of age seeks abortion services, the medical practitioner has to report the case to a juvenile police unit or the local

police unit, failure of which results in legal action. The Act does not recognise that as service seekers a majority of women do not have control over their bodies or sexuality and for the service providers the possibility of being prosecuted under the Indian Penal Code limits their discretionary power to provide greater access to legal abortion services.

Way forward

Though lauded as a step in the right direction, there are gaps that need to be addressed. The positives are increased gestation age, one provider to certify abortion up to 20 weeks of gestation, replacing the word "husband" with "partner", assurance of confidentiality of the woman

Decriminalise abortion: The rights dialogue will not happen till Sections 312- 316 are removed. Till this is done, abortion will continue to be governed by doctors. The need is to strategize using the activism of LGBTQ for the repeal of Section 377.

Remove the hierarchy of power*:* Permit abortion on demand up to at least 12 weeks of gestation. and empower the woman to take decisions about her own body. Extend the gestation age upto 24 weeks for all women instead of special categories of women. Let the pregnant woman to decide whether or not she wants to continue a pregnancy knowing what is the long term impact on her life as well as that of her child in case of fetal anomalies.

In August 2017, the Supreme Court unanimously ruled that the right to privacy is a fundamental right of every Indian citizen and in addition to that, Justice Chelameswar who was on the panel said a woman freedom of choice whether to bear a child or abort her pregnancy are areas which fall in the realm of privacy.

Sensitize providers: To increase access to safe and legal abortion services, sensitize service providers to be less judgemental, be scientific, objective and compassionate when a woman comes seeking a termination.

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Spotlight series webinar 4:

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Hosted by:
CommonHealth
&
Mahila Sarvangeen Utkarsh Mandal (MASUM)

Tuesday, November 9, 2021 03.00 – 04.30 PM IST

Zoom Registration Link
https://us06web.zoom.us/webinar/register/WN_fnW0GOUBTjqnVk2paGxOKg
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Agenda

3:00-3:05 PM: Welcome and Context-Setting
Dr Suchitra Dalvie, Coordinator, ASAP

3:05-3:20 PM: Do we have a right to safe abortion in India?
A Keynote Address by Dr Manisha Gupte, Co-Convenor, MASUM

3:20-3:40 PM: The Multiplicity of Challenges to Abortion Access- Highlights of thematic studies
Dr Alka Barua, Abortion Theme Lead, CommonHealth
Ms. Kajal Jain, Programme Coordinator, MASUM

3:40-4:10 PM: Will MTP Act Amendments improve access for vulnerable women?
Dr Alka Barua in conversation with
Ms. Akanksha Moray, Youth Volunteer, FPA India, Hyderabad Branch
Ms. Nidhi Goyal, Executive Director, Rising Flames
Ms Sara Gattani, India Safe Abortion Youth Advocates

4.10 – 4.25 pm: Questions and Open discussion

4:25-4:30 PM: Wrap-up
Dr Suchitra Dalvie