Not just a question of weeks

On Friday, the Supreme Court of India declined the abortion request of a 10-year-old rape survivor who was reportedly 32 weeks pregnant. Doctors who examined the adolescent opined that an abortion at this stage posed a risk to her life. Under the circumstances, the court could not have done much else. But this decision must be looked at in contrast to the recent landmark decision by the Supreme Court allowing an adult mother to abort her over-20 week foetus. The top court's decision was not the first time that it had made an exception from the existing law. Like always, it relied on a report of a medical board which said that the infant was likely to suffer from a severe mental injury or cardiac problems that would require multiple surgeries. As is evident, leniency is not always extended from the existing legislation.

The Medical Termination of Pregnancy Act stipulates a cap of 20 weeks within which an abortion can be performed. While advising an abortion, medical practitioners are expected to evaluate whether continuing with the pregnancy would involve a risk to the life of the mother or cause grave injury to her physical and mental health. Alternatively, the decision is based on whether there would be a substantial risk of the child being handicapped by physical or mental abnormalities. Notably, the Act also provides that if any of these medical eventualities is likely to arise, then the mother's actual or foreseeable environment must also be taken into consideration.

The 20-week cap is somewhat arbitrary and has drawn rightful criticism. Foetal impairments often get detected at the ultrasound done between 18 to 22 weeks, when the foetus is said to have "substantially developed". But in a country where a majority of expectant mothers still seek advice from midwives and Accredited Social Health Activists (ASHA), ultrasounds are only done when something "unusual" is suspected. Perhaps taking note of this, the government, in 2016, launched the Pradhan Mantri Surakshit Matritva Abhiyan under which doctors at private and government facilities are required to provide free antenatal care on the ninth of every month. While ultrasounds are also covered, some ASHAs report that free ultrasounds are often not offered.

In fact, even before this programme, the government, in 2014, introduced the Medical Termination of Pregnancy (Amendment) Bill. A step forward, it proposed increasing the abortion ceiling limit from 20 to 24 weeks. It introduced the concept of "substantial foetal abnormalities" — in which case the time period of pregnancy is irrelevant — and widened the scope of who could carry out the abortions by introducing the term "registered health care provider", which included recognised practitioners of Ayurveda, Unani and homoeopathy.

Unfortunately, the Bill is still awaiting approval. The Prime Minister's Office is reported to have returned the proposed amendments and called for stricter implementation of the law. It believes that amendments to the Act are likely to give rise to illegal sex selection and abortion rackets.

In contrast, the World Health Organisation notes: "Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates. Conversely, laws and policies that facilitate access to safe abortion do not increase the rate or number of abortions. The principal effect is to shift previously clandestine, unsafe procedures to legal and safe ones. Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality. Legal restrictions also lead many women to seek services in other countries/states, which is costly, delays access and creates social inequities."

The WHO report also says that "laws and policies on abortion should protect women's health and their human rights. Regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed." While at present, petitions questioning the

constitutional validity of the Act are pending before the Supreme Court in India, in the past, provisions of the Act have been held to be reasonable restrictions placed on the exercise of reproductive choices. The court has observed that in the case of pregnant women, there is also a “compelling state interest” in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified are fulfilled.

But from a women’s rights perspective, should not a pregnant mother have the right to decide whether to go through full-term when there is even the slightest chance of a foetal infirmity and not “substantial foetal abnormalities”? It is fair to state that no woman who voluntarily chose to get pregnant is likely to seek an abortion unless there are compelling circumstances. Should not the wishes and desires of the person who will be the caretaker be considered?

Abortion the world over is a sensitive topic. Arguments cut both ways. Each country has its own time limit within which the pregnancy may be terminated, but in most cases it’s more than 20 weeks. Given the advancements in medical science, a lot of abnormalities can be determined by an ultrasound midway through a pregnancy. Unfortunately, there appear to be no guidelines relating to the conduct of ultrasounds. As a starting point, we need uniformity in medical standards. Simultaneously, the long-pending Bill, which took into account some of the changed circumstances, needs to get passed. It would be helpful alongside to also lay down objective standards to be followed by health-care providers so that every case does not fall in the court’s cradle. If the cord isn’t cut, we will continue to rely on court-ordered termination of pregnancies, which, most times, is not the desired route for the delivery of justice in abortion cases.

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The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President’s plan

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