

**A note on**

**ABORTION : CAUSE FOR CONCERN IN INDIA,  
EVEN 25 YEARS AFTER LEGALISATION**

**by**

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**For**

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Dear Sisters,

Dec 28, 1997

Greetings from all of us at CEHAT, Pune! We are glad to be here to meet you all. Besides the common cause for which we all like to gather on this platform, we are here with a particular reason, too.

We at CEHAT have been working on the abortion issue for last three years. The issue of abortion has been close to our hearts for various reasons. As we all know, 25 years after its legalisation, women still find difficult getting an abortion done. Number of research studies, especially taken up by non-government organisations and women's groups have been able to identify the problem areas. We, and I am sure you all, strongly feel the need to generate discussions among various constituencies related to abortion, such as, providers, policy makers, bureaucrats, NGOs and women's groups to gather an update of their views on the issue. A lot of valuable research findings on abortion issue have remained on the paper while they assume a great importance to the women at large. Though we do make efforts on small scale to apply them, such efforts are often 'temporary' type and do not really solve the problem since the problems about the MTP Act, remains untouched. Taking inspiration from you all and in anticipation of your support address the issue more concretely which will yield something tangible for women. Deliberations during such meeting become more meaningful when coupled with such efforts.

Broadly speaking, the problem areas in abortion could be attributed to poor implementation of and inadequacies in the MTP Act which ultimately find their roots partially in the lack of the State's will and partially in the patriarchy in our society.

We have been discussing the issue at various platforms with different concerned constituencies. Meeting women's group from all over the nation is made best possible through these regularly conducted Annual Meets.

While we take this opportunity to circulate the note titled "Abortion : Cause for concern in India, even 25 years after its legalisation." would like to thank all those who have made this possible. A 'Response sheet' attached to the note provides space for you to get back to us with your views, supportive or otherwise. Please feel free to contact us in case you have any queries. We will be most happy to respond.

Please participate in the workshop. Watch out for the announcements of this **workshop** on "**Abortion : Cause for Concern ...**" **to be held on Dec 29, 1997 at the venue** (the posters are being displayed). Your contribution to these efforts is precious!

Thank you with a warm hug.

In sisterhood.

Sunita Bandewar, Hemlata Pisal and Mugdha Lele.

**A note on**

## **ABORTION : CAUSE FOR CONCERN IN INDIA, EVEN 25 YEARS AFTER LEGALISATION**

The initiative taken by the Government of India to pass the Medical Termination of Pregnancy (MTP) Act, 1971 needs to be appreciated as it has de-criminalised abortion. However, the access of women to safe and legal abortion remains a cause for concern for various reasons :

- skewed distribution of abortion services in rural / urban areas and states
- odd spatial distribution of abortion care centres, even locally
- inadequate and mal-functioning of public MTP centers
- high and non-standardised costs in private abortion care services
- unacceptably poor quality of abortion care
- the lack of integration of pre- and post-operative counselling with medical care to minimise negative impact of abortion on woman's health
- the lack of a woman-centered, woman-sensitive and woman-friendly perspective in education and in the awareness programs on contraception
- the wrong linkage of abortion with family planning and population control
- inadequate training facilities and poor content of training modules
- poorly-equipped government machinery for implementation of MTP Act
- the stigma attached to the act of abortion, the secondary status of woman, patriarchal values and their bearing on women's access to abortion.

**Are these problems insurmountable? All these problems could be attributed directly or indirectly to the poor implementation of the MTP Act, to inadequate financial support for public health services or to inherent inadequacies in the Act. And above all, to the lack of political will. As a consequence, women are exposed to unsafe abortion regardless of the registration status per se of the abortion service centre.**

The MTP Act is a vivid example of how legislation alone is quite inadequate in the absence of political will!

This is, therefore, to address the **legal inadequacies** and **poor quality of abortion care** and suggest or recommend strategies to overcome them.

### **Legal Inadequacies : Areas for Improvement in the MTP Act**

***The restrictive nature of the Act*** : Firstly, the Act looks only into the medical aspects of abortion. It does not recognise abortion as the right of a woman nor does it take into account the psychological and social aspects of abortion. The MTP Act permits abortion only if the doctor in good faith believes that “. . .the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.”

Pregnancy followed by rape (marital rape not included) or failure of contraception (for married women) are specifically mentioned as indicators in two separate “explanatory notes” of the Act clarifying what could cause injury to mental health. The Act thus does not allow all women to have access to abortion services. Unmarried women, widows and

women separated from their husbands are forced to tell lies to fit within the existing framework of the Act. The woman thus has no space to acknowledge her sexuality or control her fertility and reproduction.

Besides, the Act is open to differing interpretations of the legal provisions on the part of the providers. Presently, the pre-occupation with population control and the somewhat commercial motivations of the medical profession have, ironically, lent a liberal interpretation to the law. However, the danger remains that, under different demographic and socio-economic or political compulsions, the interpretation of the Act could take on a restrictive meaning - without even one word of the text being altered. In addition, the socio-cultural prejudices of the provider has direct bearing on the extent to which various abortion situations are accommodated or otherwise within the framework of the Act.

**The pre-occupation with population control is manifested in cases where contraceptives are pushed on women after the abortion - a compulsion outside the legal requirements - reducing women's access to safe abortion. The other such demand outside the legal requirements is for husband's signature which is much resented by women since it severely restricts their access to safe abortion.**

### **Implementation of the MTP Act : Problem areas**

**1. Availability of abortion services :** The Act allows abortion to be conducted only by a Registered Medical Practitioner (RMP) "who has such experience or training in gynaecology and obstetrics" at a place which is approved by the concerned authority for the purpose, or in a hospital established or maintained by Government. From a concern for the morbidity and mortality that could afflict women undergoing abortion, one cannot dispute the need to make available properly-trained medical personnel and well-equipped centres. Unfortunately, the ground realities are different in India where basic health care services, leave alone abortion services, are inaccessible and unavailable for many.

**Legal liberalisation of abortion must, therefore, be coupled with an adequate level of the provision of abortion services.**

Also, the standards set are **only in terms of medical skills and physical standards**. The non-medical aspects of the quality of care, say for instance, counselling, do not feature anywhere in the Act. **Gender-sensitive treatment and counselling skills should also constitute the MTP training module** for better abortion care services.

**2. The registration procedure :** Providers have been facing problems in getting registration done for the centre under the MTP Act. Providers have often expressed frustration that the concerned government authority does not respond to their applications as required by the Act. However, the high prevalence of non-registered centres all over the State throws light not only on the government's but also on providers' laxity.

Loose monitoring by the Government and the lethargy of providers in getting registrations done has worsened **women's access to safe and legal abortion**. Besides the need for government to gear up its own machinery, the providers need to come forward with their problems, suggestions on registration and to share the responsibility.

**Though overcoming the poor status of registration does not ensure safe abortion, it at least demands accountability on the part of the provider to the woman.**

**Conversely, the safe conditions at some centres, despite their “non-registered” status, does not mean that they should remain unregistered.**

**3. The maintenance of records and reporting :** The maintenance of records and reporting is poor at various levels in government offices and at the registered MTP centres. Government records, obtained from various sources, show discrepancies and lapses. The bureaucrats attribute this sorry state to under-staffing. The heads of the institutions justify poor records due to: clerical workload, the fear of larger income-tax, etc. However, this is not true. They are excuses and not genuine problems.

Providers must realise that under-reporting or mis-reporting misleads policy-makers, thus defeating the very purpose of reporting. Problems of “fitting cases into the framework of the Act” further worsens the quality of data.

Successful implementation of the Act is the mutual responsibility of the government and providers. In order to report correctly, providers need to feel that they are accountable to the government and to the public. Self-regulatory and self-monitoring systems need to be explored.

### **The socio-cultural context of abortion**

The abortion issue is complex because of

- (1) its socio-cultural context,
- (2) the stigma attached,
- (3) the sexual politics involved,
- (4) its links with population policies,
- (5) its (mis)use as contraception or spacing,
- (6) its abuse for discriminatory elimination,  
(for instance sex selective abortions) and
- (7) ethical dilemmas that women and the women’s movement face.

Women carry a tremendous burden of guilt when they undergo an abortion. The sheer necessity of abortion bails them out of a no-choice situation. Abortion is a hard decision for any woman to take. Though often referred to as an ‘open secret’, the woman struggles to maintain confidentiality. She is expected to be “bold” and opt for it, and yet she is denigrated for doing so. The woman is helpless because she has been cornered into undergoing an abortion regardless of her own wishes.

**The complex situation in which an individual woman finds herself arises because of the people, who are responsible for it more than her alone.**

These socio-cultural factors in combination with her economic dependence compel her to trade off quality care. To keep confidentiality and to return home quickly, women often risk their health and life. Her expectations about the quality of abortion care are drowned by her “concern to maintain confidentiality.”

The secondary position of women in society, her economic dependence, her ignorance about rights, her over-commitment in duties towards others - all these factors have a compounding negative impact on her access to abortion care, impinging directly on her health and well-being. We don’t intend to overlook the differences, viz, regional, class based, location-based (rural/urban) with regard to abortion and the related circumstances

of women. There are women, fortunate not to face any or even half the woes that we have narrated. But women, in large proportions, do face these problems. So there is enough cause to take up the issue !

### **Some ethical issues**

Some of the most sensitive and controversial issues are abortion after sex-determination and the ethics of abortion. Disapproving abortions after sex determination and approving abortion, simultaneously may sound conflicting, but it is not so. If we look at the fundamental premises, this is only a pseudo-conflict. Justifying abortion after sex determination, we believe, is providing hazardous choices to women. Whereas, the ethics of abortion probably does not need explanation if we accept the reproductive rights of women within the framework of human rights.

### **The MTP Act and national policies**

Having reviewed the abortion situation there are certain issues that **lie outside the purview of the MTP Act** and need to be addressed in the wider context of overall **National Health Policy, population policy, and policy for women.**

State policy is the single most important factor that determines whether women should have access to abortion facilities to meet the state's ends or to meet her own needs. It is not the woman who should feel obliged in availing abortion facilities but it is the state who should feel responsible to offer women safe and legal abortion care in the public health care sector.

The abortion issue has two facets, first **public health and second, woman's rights.** Both are equally important. By not focusing its latter facet, the fertility and sexuality of women is left outside the ambit of public discourse retaining the "personal and private" nature of the woman's problem. The state safeguards its own interest by making such a policy. **Thus, while we are concerned about woman's health, we need not shy away from recognising it as a human rights issue.**

### **Strategies to address the issues**

If our concern is that **women should have access to safe and legal abortion facilities,** we have to work at three different levels, aiming at **short and long term goals** to be achieved through our endeavours.

#### **1) Efforts to improve the outreach and quality of abortion care by optimising the existing resources.**

Within the given framework of the MTP Act, **poor implementation** has led to its under-utilisation. Improved implementation and efficient monitoring will **ensure safe abortion facilities.**

The government machinery is not equipped to meet the **training needs of abortion in terms of training centres and funds.** This could be taken care of by giving recognition to additional MTP centres for training. This needs to be explored on a priority basis. Innovative ideas could come from providers themselves who may have borne the brunt of it. Prospective providers can make arrangements to get trained by their colleagues who

are qualified to do so. As this is already happening, it could be formalised. This will also increase the scope for more centres to register themselves, bringing them under the purview of being monitored. Such training should of course be standardised with no compromise on quality.

Careful management could avoid **mismatch between skilled personnel and equipped centres**, in case of the public health care sector. **These are the short terms goals.**

## **2) Need to address the problems of under-budgeting the health-care-sector in general.**

The problem of inadequate and poor abortion services will partially be taken care of by optimising the existing resources. However, the issue of inadequate public funding needs to be addressed at the policy level.

Inadequate funds cause inadequate training centres, poorly financed training modules, inadequate staff in MTP cells in the concerned government offices affecting monitoring, inability to provide MTP services at all public care centres. Thus, **expansion of quality abortion care is contingent upon the availability of funds.**

**Enhanced funding will also be able to address the dichotomies in abortion care services, such as, rural/urban and public/private.**

## **3) Building the lobby of pressure groups to bring about amendments in the MTP Act.**

Inadequacies in the MTP Act - its restrictive nature leaving loopholes for interpretation, the stipulated standards not incorporating counselling skills, and over-medicalisation - leave women at the mercy of the providers. We have to aim at the shift from the MTP Act to Abortion Act enabling all women to have access to abortion care in a humane fashion. This is a **long term goal.**

**4)** As regards the socio-cultural factors, changes are not possible in a single leap. Medical professionals in general and abortion providers in particular can improve women's access to abortion services by understanding the socio-cultural context of the abortion issue.

Incorporating a strong component of Information, Education and Communication (IEC) will be able to address this issue to some extent. The availability of safe and legal abortion facilities as well as lower risk in seeking abortion up to 10 weeks of gestation - all this needs to be communicated.

**Abortion through such IEC messages needs to be treated not as an alternative to contraception but as part of the woman's right to safeguard her reproductive health.**

To take the campaign ahead we begin to build on the common premises which we are sure you will all agree upon

1) that a majority of problems regarding access to abortion are surmountable, provided there is political will

2) that representatives of the various stake-holders, viz., providers, clients, lawyers, bureaucrats, policy-makers, activists, researchers, non-government organisations and women's groups are required to share a common platform for exchange of views and facilitating deliberations

3) that there is need to arrive at a consensus and recommendations to be made to the government for revision of the MTP Act and

4) that there is need to build a lobby to achieve these goals.

We will appreciate if you co-operate by :

- critically going through the document and sending us suggestions,
- disseminating it,
- initiating discussions on various platforms, and
- sharing with us your experiences during the process,
- informing us about any activities in your area,
- any other way you think suitable.

Your agreements and disagreements are important to us! Please do send us feed-back.