HUMANITARIAN & DEVELOPMENT PROGRAMME

ABORTION RIGHTS:
Past, present and possible future

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Due to the lowering of the age of menarche in recent years, girls are getting their periods from the age of 10 while the age of menopause continues to be around 50.[i] Thus, a girl who is 10 today will have to deal with around 480 menstrual cycles and face the potential likelihood of a pregnancy 400 times as long as she is sexually active. Given that most women would want to have only one or two children by choice, she needs a contraception that will protect her 398 times, without fail.[ii]

CONTRACEPTION

Studies indicate that about half of the sexually active women of reproductive age in the developing world want to avoid pregnancy but about 140 million are not using any method of family planning and 75 million are using less-effective traditional methods.[iii]

While providing safe and effective and suitable contraception to all (not just married couples) is important, the reality is that of the estimated 87 million unplanned pregnancies that occur each year, an estimated 26.5 million are due to inappropriate use or method failure.[iv] Even with perfect use there would still be nearly 6 million accidental pregnancies per year. [v]

Many of the planned and wanted pregnancies also may become unwanted during the course due to various reasons including the woman's health, social situation, relationship issues, violence, foetal abnormalities and other reasons.

About 70,000 women die each year from the effects of unsafe abortion—an estimate that has hardly changed in the last 10 years. Annually, an estimated eight million women experience complications that need medical treatment, but only five million receive care.[vi] Those women who do reach hospitals for post abortion care have a high mortality rate. [vii] Even in countries with liberal laws, such as India and Nepal, there are difficulties in access and women continue to die from unsafe abortions. [viii] Women seeking abortions in the second trimester face even greater barriers. [ix]

HIGHLIGHTS OF THE HISTORY OF ABORTION

The need to terminate an unwanted pregnancy is certainly as old as human evolution. Unlike other animal species (with the exception of some great apes), humans are fertile throughout the year. For as long as men and women have been having sex, women have become pregnant and would have sought to end some of these pregnancies. This need was probably not as great in earlier tribal and nomadic social structures but with the agricultural and industrial revolutions and increased private ownership of property, there was created a need for determining paternity and hence controlling women's sexuality.

The first recorded evidence of induced abortion, is from the Egyptian Ebers Papyrus in 1550 BC. According to Chinese folklore, mercury was being used to induce abortions nearly 5000 years ago.[x]

Many of the methods employed in early cultures included climbing, weightlifting, using irritant herbs, bloodletting, pouring hot water onto the abdomen. Kneading the abdomen with a hot stone is still used by women in Asia and Africa when they do not have access to safe abortion services. [xi],[xii]

While the Hippocratic Oath forbids the use of pessaries (vaginal suppositories) to induce abortion, it did not prohibit abortion. Modern scholarship suggests that pessaries were banned because they were reported to cause vaginal ulcers. Regardless of the Oath's interpretation, Hippocrates writes of advising a prostitute who became pregnant to jump up and down, touching her buttocks with her heels at each leap, so as to induce miscarriage, which he even called the Lacedaemonium leap. Other writings attributed to him describe instruments fashioned to dilate the cervix and curette inside of the uterus.[xiii]

During the medieval period, physicians in the Islamic world documented detailed and extensive lists of birth control practices, including the use of abortifacients, commenting on their effectiveness and prevalence.[xiv]

Due to the secrecy around the procedure and the use of dangerous methods, till the 19th century, abortion was seen as the last resort, especially for unmarried women. Dr. Evelyn Fisher wrote of how women living in a mining town in Wales during the 1920s used candles intended for Roman Catholic ceremonies to dilate the cervix in an effort to self-induce abortion. Similarly, the use of candles and other objects, such as glass rods, penholders, curling irons, spoons, sticks, knives, and catheters was reported during the 19th century in the United States.[xv]

But as people began to talk about abortion in terms of family planning for married women, it was re-conceptualized as a logical solution to unwanted pregnancies resulting from ineffectual contraceptives. Ironically, around the same time abortion become increasingly criminalized in the United States, and England. It could be partly because till then abortion genuinely was a dangerous procedure done with crude methods, and high mortality rates. But at that time most surgical procedures were being conducted in a similar way and were not banned.

``Protecting'' women from the dangers of abortion was actually meant to control them and restrict them to their traditional child-bearing role. Antiabortion legislation was part of an antifeminist backlash to the growing movements for suffrage, voluntary motherhood, and other women's rights in the 19th century. [xvi]

Witch hunts as part of the quelling of the peasant revolutions led to the killing of millions of women in Europe and USA. One writer has estimated the number of executions at an average of 600 a year for certain German cities – or two a day, “leaving

out Sundays.: Nine-hundred witches were destroyed in a single year in the Wertzberg area, and 1000 in and around Como. At Toulouse, four-hundred were put to death in a day. In the Bishopric of Trier, in 1585, two villages were left with only one female inhabitant each. Many writers have estimated the total number killed to have been in the millions."[xvii]

At the same time as these women healers were being branded as witches for doing 'magic', the male doctors who were using leeches and vapours were creating professional alliances and establishment. Women were systematically kept out of these and the explanation given was that women had a small brain, were incapable of being rational, they were too emotional, prone to hysteria (in itself a word with the same origins as hysteros meaning uterus) and that so much studying will reduce their capacity for child bearing.

Women were instead considered suitable for nursing work since it aligned with their 'natural instinct for caring'. Basically, a convenient rationale was provided for a sexist division of roles, where men could be the bosses and give orders and women followed around taking the orders and doing the dirty work.

The medical establishment actively took up the antiabortion cause in the second half of the 19th century as part of its effort to eliminate midwives. [xviii] Thus, the newly formed American Medical Association (AMA) argued that abortion was both immoral and dangerous.

By 1880, most abortions were illegal in the U.S., except those ``necessary to save the life of the woman.'' But the tradition of women's right to early abortion was rooted in U.S. society by then; abortionists continued to practice openly with public support, and juries refused to convict them. [xix] The Jane collective came up in the United States where women trained themselves and other women to provide safe abortions.[xx]

By 1910 all but one state had criminalized abortion except where necessary, in a doctor's judgment, to save the woman's life. In this way, legal abortion was successfully transformed into a "physicians-only" practice.

Then, as now, making abortion illegal neither eliminated the need for abortion nor prevented its practice. A study conducted by the Guttmacher Institute says: "Highly restrictive abortion laws are not associated with lower abortion rates. When countries are grouped according to the grounds under which the procedure is legal, the rate is 37 abortions per 1,000 women of childbearing age where it is prohibited altogether or allowed only to save a woman's life, compared with 34 per 1,000 where it is available on request, a nonsignificant difference." [xxi]

Despite this, abortion is the only medical procedure which continues to be criminalized because many countries in South and South East Asia inherit the Penal Code from the

colonizers—British, Spanish and Dutch-- which criminalize abortion. For e.g. Sections 312 -316 of the Indian Penal Code (1860), miscarriage is a criminal offence.[xxii]

The laws in most of the countries in Asia continue to be based on Penal codes of their colonizers[xxiii]. The European countries who were colonizing have moved ahead from their own understanding in the 1800s but in this region, we stay tied down to these archaic diktats which criminalize miscarriage. In Nepal, where abortion was made legal on broad grounds in 2002, it appears that abortion-related complications are on the decline. A recent study in eight districts found that abortion-related complications accounted for 54% of all facility-treated maternal illnesses in 1998, but for only 28% in 2008–2009. [xxiv]

Women who are determined not to carry an unwanted pregnancy have always found some way to try to abort. Restricting abortion only makes them more unsafe. The coat hanger has thus become a symbol of the desperation of millions of women who have risked death to end a pregnancy.

The 20th century saw improvements in abortion technology, increasing its safety, and reducing its side-effects. The invention of the Karman cannula, a flexible plastic cannula which replaced earlier metal models in the 1970s, reduced the occurrence of perforation and made suction-aspiration methods possible under local anaesthesia.

In 1980, researchers at Roussel Uclaf in France developed mifepristone, a chemical compound which works as an abortifacient by blocking hormone action. It was first marketed in France under the trade name Mifegyne in 1988.[xxv] The French Health Minister called it the moral property of women.[xxvi]

BARRIERS TO ACCESS

When any of these women want to terminate the unwanted pregnancy, whether it was planned or not, they will face a multitude of barriers. These range from restrictive laws[xxvii], negative provider attitudes[xxviii] and disinclination to interpret the law to the fullest[xxix], lack of service delivery facilities[xxx], non-availability of medical abortion pills among many other reasons. Worryingly, it seems that medical students are either being misinformed or not being accurately informed about the legal framework or the importance of safe abortion even in a country like India where it is legal under a set of conditions.[xxxi] ,[xxxii]

The Guttmacher study shows that more countries have liberalized their abortion laws in the last decade. [xxxiii] But much more is still needed.

Speaking to the UN General Assembly in October 2011, the UN Special Rapporteur for Health, Anand Grover, made an urgent call to all governments to completely decriminalize abortion. "*Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to*

health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health."[xxxiv]

The ICPD held in 1994 in Cairo was considered a watershed moment, which saw a paradigm shift in the population discourse globally, when SRHR was seen as an individual right rather than just a demographic concern. Despite this, the Program of Action articulated that abortion should be safe 'where legal'. There has been nothing also in the MDGs or the SDGs specific to the prevention of unsafe abortion.[xxxv]

From the 1994 ICPD till the current reinstated Global Gag Rule in 2017, safe abortion has been the first right to be bargained away. We have been asked to vehemently deny that it is a family planning method (although it clearly is for some women). We have had to agree that 'repeat abortions' should receive more counselling on long term or permanent contraception although we never have any conversation on post contraception abortion?

The Global Gag Rule or the Mexico City Policy which the American President signed in within days of assuming will applied to "all global health assistance furnished by all departments or agencies." USD 10.3 trillion funding for programs including AIDS prevention, infectious disease, maternal health, malaria, tuberculosis, nutrition and more.[xxxvi] In countries like Cambodia, Myanmar and even Nepal, where USAID funding supports many INGOs and local NGOs providing contraceptive as well as safe abortion referrals or services, this is likely to result in close to 2,00,000 unintended pregnancies with a possibility of 50,000 unsafe abortions every year. [xxxvii]

WHAT DOES THE FUTURE HOLD?

There are probably more than 2882 million smartphone users in the Asia-Pacific. This can transform the way young women can access accurate information and mHealth could become a tool of empowerment and of subversion. [xxxviii] ,[xxxix]

Women are already shifting the boundaries of service provision by self-use of the medical abortion pills, via over the counter purchases or telemedicine.

We should work to place safe abortion rights within the spectrum of sexual and reproductive health and rights and advocate for de-criminalization, legalization, accurate information availability, addressing stigma on sexuality as well as abortion, bring in discussions on patriarchy which leads to gender inequality and subordination of women to the extent that they do not have control over their sexuality and body.

We need to integrate the safe abortion advocacy efforts with the entire intersectional movement around issues like safe motherhood, obstetric violence, sexual health and rights, LGBTQI movement, reproductive health and rights, preventing child marriages, sexuality education, and violence against women.

We should demand greater investment in the training of health care providers, in the pre-service years and beyond, to ensure gender and rights sensitization.

We should also hold our governments accountable to ensure adequate budgets for providing services in the public sector, and to ensure regularization of services (quality and costs) in the private sector.

Women must have access to safe abortions in order to fulfill their highest potential. Until they are freed from compulsory motherhood they cannot contribute meaningfully to their families, societies and the world at large.

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