Sexual abuse of girls followed by refusal of abortion: a statement of concern

On 28 July, the case of a 10-year-old girl who became pregnant after being sexually abused by her uncle hit the news in India and around the world. According to reports, the family approached the district court in Chandigarh for permission for the child to have an abortion in the first part of July. It took until 15 July for a medical board to examine the girl and submit a report on the feasibility of an abortion. Yet the feasibility of an abortion should never have been in question.

To make matters worse, the response of the medical board was clinically inaccurate and anti-abortion. It made doing an abortion appear to be more dangerous than if the child carried the pregnancy to term. And it led the court to refuse the abortion.

An appeal to the Supreme Court of India was filed only on 22 July and yet another medical board was tasked with examining the girl. Again, the medical advice was that termination of pregnancy was not safe either for the girl or the fetus and termination was refused.[1] By this time, the girl was believed to be 32 weeks pregnant. However, even at this stage of pregnancy, termination of pregnancy is safer than carrying the pregnancy to term because the fetus is 8 weeks smaller than it will be at 40 weeks, substantially smaller.

When a story like this hits the news, other similar stories also find their way into the media. This is currently happening. On 17 July, the Kerala High Court denied abortion to a 12- year- old girl child raped by her 14 –year- old brother and 28 weeks pregnant. The judgement was based on medical advice from the government medical college hospital who advised the judge that medical termination would be more hazardous than carrying the pregnancy to term.

These cases are instructive of why depending on the courts and ad hoc medical opinion can lead to clinically unjustified delay and result in gross injustice.

Background

As many as 20% of girl children (with prevalence ranging from 4% to 37% in the few countries where research has been done) are sexually abused. In many cases the abuse may last for years.[2]

Pregnancy is a not uncommon outcome of rape and sexual abuse of adolescents and adult women, but there is only anecdotal evidence as to the prevalence in children aged 8-14 years. Due to premature development, girls as young as 8 years of age may reach menarche and become pregnant. It is well known that many children do not report existing abuse until there is a crisis. The discovery of pregnancy in a girl child is one such crisis. The child is often too young to understand that she is pregnant. She may report stomach pain and be taken to a doctor, where the pregnancy is discovered. Or an adult notices the child is putting on weight and she is then examined. By then, the pregnancy is usually advanced.

Under such circumstances, abortions are – and should be seen as – legal, because in India abortion is permitted in order to save the life of the woman (and girl child) without the need for seeking the intervention of courts or constituting medical boards for advice. This is because for a child aged 8-14 to have to carry a pregnancy to term constitutes a serious threat to her life. Without exception. Without upper time limits.

Without access to abortion, there are only two options for a pregnant child, both of which carry far more risk than abortion: 1) either a caesarean section to avoid carrying the pregnancy to term, or 2) to give birth from a small body that itself requires many more years of growth and development before being able to deliver a baby safely.

It is the lack of this knowledge or deliberate anti-abortion obfuscation that prevent an abortion taking place in a timely manner.

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[1] http://www.safeabortionwomensright.org/abortion-plea-for-sexually-abused-10-year-old/.

[2] Prevalence of sexual violence against children and use of social services – seven countries, 2007-2013. CDC Morbidity and Mortality Weekly Report, June 5, 2015 / 64(21);565-69.

The result is the existence of child mothers at very young ages. Yet neither the courts nor the doctors have to take responsibility for the consequences when a child gives birth to another child and her family is left to pick up the pieces. This makes the child a victim not once but twice and for the rest of her life.

Denying an abortion is to inflict more violence on the victim of sexual abuse.3

Recommendations: All survivors of sexual abuse and rape should be allowed a legal abortion, especially children

1. The government should include in its standards and guidelines for safe abortion permission to provide a safe abortion for everyone who has been raped or sexually abused, in recognition that the pregnancy constitutes a serious risk to the life, health and mental health of the child and adolescent (as well as the woman), and especially in girls under the age of 18. In recognition that such cases are often reported in the second and third trimester of pregnancy, there should be no legal upper time limit on abortion in these cases. This is in keeping with the provisions of the Protection of Children from Sexual Offences Act and the Criminal Law Amendment Act 2013 which provide for right to treatment for sexual abuse survivors, and abortion is an essential component of such treatment.

2. The discovery of pregnancy in a child that has resulted from sexual abuse or rape constitutes a medical emergency. The courts cannot be expected to have the expertise to deliver a legal judgement as to whether an abortion would be clinically safe in an emergency situation. Indeed, the courts should not be involved at all in deciding whether a girl or woman has a legal right to an abortion in these circumstances. This understanding of the law should be taught in medical education, understood and duly implemented by members of the medical profession responsible for abortion services when such an emergency arises, without delay or debate.

3. It is not necessary to constitute an ad hoc medical board to examine a girl child or indeed any adolescent girl or woman, to determine whether or not an abortion would be safe. Abortion is one of the safest medical procedures when managed by a trained person and one of the most common. There is strong evidence to show that an abortion is always safer in the first and second trimester of pregnancy, but there is less experience in the third trimester. It is, however, possible to say that a third trimester abortion in experienced hands is at least as safe as delivery at term, and may be safer. At the same time, the closer to term a pregnancy in a child gets, the more the risks of inducing labour before term, carrying out a hysterotomy/caesarean section, or managing a vaginal delivery merge into each other.

Pregnancy in a girl under the age of at least 18 is never safe. The uterus is under-developed. The pelvic bones and spine are not large or developed enough to carry the weight of a pregnancy without damage. The cervix and birth canal are far too narrow, and a vaginal delivery would run a serious risk of obstructed labour, a major cause of maternal death, which has killed many young women who fell pregnant at too young an age. A caesarean section in a child also carries far more risk than an induced abortion.

4. The kind of anti-abortion views expressed in some of the cases reported, which stop abortions taking place, constitute personal opinions based on private beliefs. They must not be treated as bona fide medical judgment. They have no place in the courts, or in the management of the public health system or in the provision of health and medical care. While individual clinicians and judges have a right to hold their own beliefs, such beliefs should never obstruct or prevent or delay the care that every patient deserves to protect her life and health.

We demand that the 10 year old girl in the case reported and the 13 year old girl in Kerala be given immediate medical attention, with a reconsidered medical opinion that takes into account the special circumstances of pregnancy in these children and its life threatening nature, and all efforts to terminate the pregnancy safely as soon as possible be made. We also demand that long term psychosocial support be provided to these girls in order to enable them to heal from this trauma and obtain closure.

[3] See Sanchita Sharma. Hindustan Times, 23 July 2017; Subha Sri Balakrishnan, Scroll.in, 29 July 2017; and Times of India, 30 July 2017.

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