

A STUDY ON THE RIGHTS OF HUSBAND IN THE TERMINATION OF PREGNANCY IN INDIA

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ABSTRACT

Human Rights are those rights, which should be available to every individual without any discrimination of any kind. While discussions about abortion often **focus on the rights of a mother or unborn child**, there have been efforts to elevate fathers' rights in abortion decisions through notice requirements where the fathers or the husbands rights are always being neglected, the states as well do not recognise the rights of the husband in case of abortion. Fathers are generally liable to provide financially for the needs of the child despite their wish of remaining childless, in some cases. The researcher has done an empirical research with a sample size of 200 out of convenience sampling method. The findings of the research this particular research shows that people agree to the fact that husbands rights in case of abortion should be recognised by the government and Females should not be given the right to abort solely where we should focus on sexual equality in childbearing and abortion whereby the consent of the husband should be considered. The researcher has given certain suggestions noted to overcome the denial of the rights of the husbands or fathers in abortion. That's finally concludes this research paper by stating that the government should recognise the rights of husband as well in abortion and should not be left neglected or ignored.

KEY WORDS: Abortion, husbands right, sexual equality, neglected, rights, recognition.

INTRODUCTION

Human Rights are those rights, which should be available to every individual without any discrimination of any kind. Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom. Both parents contribute to caring for the unborn child. When a child is unborn, the father usually takes care of the mother and the unborn child, financially and emotionally. He protects them and is responsible for any harm caused to them. The role of the fathers usually begins in the case where the mother wants an abortion but the father does not or in a situation where the mother wants to delay the process of abortion but mother wants an early abortion. One of abortion's many victims is the father of the child. In most European countries and the United States of America, the law does not give any rights to the father on the issue of an abortion. Quite simply, men have no legal rights when it comes to abortion. Legally, an abortion is a private matter between a woman and her doctor, even if she is married where by the consent of the father is forever being neglected.

Greece was one of the last countries in Europe to legalize abortion after a long debate in Parliament and the publication of numerous declarations by women's rights organizations. One of the areas that require clarification is the role of father it does not specify men's rights in abortion. Post-abortion counseling services are dealing with an increasing number of men coming forward, grieving their aborted children.

While discussions about abortion often **focus on the rights of a mother or unborn child**, there have been efforts to elevate fathers' rights in abortion decisions through notice requirements or “opt outs”. After all, expectant fathers might oppose a pregnant mother's decision to terminate a pregnancy or, conversely, may not wish to assume the responsibilities of fatherhood and oppose the carrying of a pregnancy to term.

The Supreme Court on 27th October 2017 in Anil Kumar Malhotra v. Ajay Pasricha dismissed the appeal filed by the husband against the Punjab & Haryana's High Court decision. By dismissing the appeal, the Supreme Court upheld the Punjab & Haryana High Court's decision which laid down that the woman has the right to decide about the abortion and that consent of the husband is not required as per the Act. The judgment of Malhotra is a progressive step in recognising and implementing the reproductive rights of women because it recognises their autonomy. Fathers are generally liable to provide financially for the needs of the child despite their wish of remaining childless, in some cases. Since there's also no need to inform the father of the pregnancy, it isn't discovered until after the birth of the child whether the father was prepared to take the responsibility of a child, financially.

While discussing the abortion issue, it's important to remember that the rights of the father must be respected while making family planning options that include abortion. The rights of father are viewed as secondary to the mother however both have an equal responsibility towards the unborn child. As a result, there is a pressing need to not only increase awareness about this "little talked about" topic, but also to press the Indian judicial system to abandon old preconceptions and give fathers an equal say, if not in all cases, then at least in some. In contemporary times, parents play an equally important role in raising children, and their importance can in no way be reduced by marital disharmony between couples. There should be a law that gives the father the same rights as the mother in deciding whether or not to abort the kid. In many circumstances, women may not want to bear the kid in order to retain their physical form or simply because they do not want to be responsible for the child. What the child's father thinks isn't taken into account. As a result, a revision to the MTP Act about the father's approval for abortion in the pregnancy wise be a highly unbalanced domain is required.

Globally, more importance and recognition is given to the mother's right and the father's rights aren't usually discussed at all, sometimes parents may have conflicting or opposite views on whether to get the child aborted or to give birth to them. Listed below are certain concerns regarding the rights of the father:

1. Consent of the father

A father's consent is not required for abortion in most countries. This is because the mother gets more affected by the pregnancy as it's her body that carries the child and she has her right to privacy. Commonly, the father's opinion isn't even considered on abortion of his own child which should be recognised by the government.

2. Need to notify the father about abortion

Consent of a father isn't required for abortion, however the question that arises is, whether father is to be informed of such abortion. In an American case law, *Planned Parenthood v Casey* (1992), the court has observed that notifying the husband about the abortion might lay a burden on the pregnant wife. In cases when the wife has not taken the consent of the husband and notifies him about the abortion, she might be risking her safety. Therefore, according to most of the courts across the world, it is not necessary to notify the husband about the abortion.

3. Financial obligations remains on the father who wants to remain childless

Fathers are generally liable to provide financially for the needs of the child despite their wish of remaining childless, in some cases. Since there's also no need to inform the father of the pregnancy, it isn't discovered until after the birth of the child whether the father was prepared to take the responsibility of a child, financially. In India, the mother's rights in abortion are considered to be primary, and the father is left with no rights at all.

Few years back, it was reported that Indonesia, Malawi, Syria, United Arab Emirates, Equatorial Guinea, Kuwait, Maldives, Morocco, South Korea, Saudi Arabia, Japan, Taiwan, and Turkey, all had laws that required that an abortion first be authorized by the woman's husband. All the mentioned countries provide equal rights to the father and the mother in case of abortion. They consider that it is the decision of both the parents and since they will be taking care of the child further and are liable for the act done by them. Even if the pregnancy is abnormal, consent of both parents should be taken into consideration.

While courts have largely treated fathers' rights in abortion decisions as secondary to those of the mother, other means exist for fathers to influence the decision, namely, through private agreements. Armin Brott has said of this, "A woman can legally deprive a man of his right to become a parent or force him to become one against his will". In 1994, the PCPNDT (Pre-Conception and Pre-Natal Diagnostic Techniques) Act was enacted to prevent misuse of the MTP Act and so that abortions aren't carried out at the whims and fancies of a woman or a couple.

AIM: The aim of the research paper is to study the rights of the husband in abortion and stress the sexual equality in case of abortion.

OBJECTIVES

- To study on the rights of the husband in abortion.
- To know the awareness among the public on the rights of the husband.
- To stress the importance of recognition of husbands rights in abortion.
- To compare the rights of the husband in India with other nations.
- To stress the sexual equality in abortion and child bearing.

REVIEW OF LITERATURE:

Fiona Bloomer, Claire Pierson, Sylvia Estrada Claudio, 2020 This book considers how societal influences, such as religion, nationalism and culture, impact abortion law and access. **Creanga, K. K. Singh, 2018** Male providers were significantly less likely to provide both surgical and medical abortions in 2004, and significantly less likely to provide surgical abortions in 2012/2013, compared to female providers. **Aradhana Cherupara Vadakkethil "Is Consent of the Husband needed for an Abortion in India?" (OxHRH Blog, 17 February 2018)** Husband's petition in the case of Anil Kumar Malhotra, is a progressive step; it represents only one step in developing the law in line with the rights of women where the rights of husband remains unrecognised. **H. Johnston, K. Iyengar, Medicine, Psychology BMC Women's Health, 2017** A potential for greater role of community health workers in

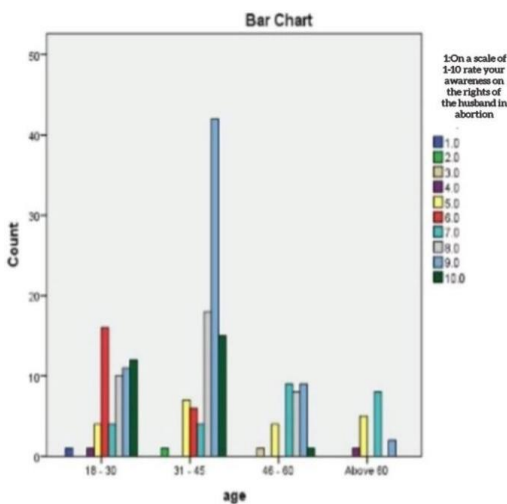
making safe abortion information and services accessible to women is supported, while highlighting the need to address women's concerns about approaching CHWs in case of unwanted pregnancy. **Sital Kalantry 2017**, In Women's Human Rights and Migration, Sital Kalantry examines the laws to ban sex-selective abortion in the United States and India to argue for a transnational feminist legal approach to evaluating prohibitions on the practices. **Kate Maloy, Margaret Jones Patterson, 2013** The complexity and rich nuances of the stories it tells permits us to see this controversy with new eyes. These stories, woven together, are our nation's story - one that has never been told by the long and angry debate **Christopher Kaczor, 2013- Appealing** to reason rather than religious belief, this book is the most comprehensive case against the choice of abortion yet published. **Modern Family Law, D. Kelly Weisberg**, Susan Frelich Appleton, 2006 This dynamic casebook: - reflects the social diversity of the modern family - examines the social and legal impacts of: the women's movement, the children's rights movement, the fathers' rights movement. **Laurie Shrage, Professor of Philosophy Laurie Shrage, 2003** Shrage argues that *Roe v Wade*'s regulatory scheme of a six-month time span for abortion on demand polarized the public and obscured alternatives with potentially broader support. **Smith, (2000:81)** quotes the declaration of the World Medical Assembly (WMA), Geneva (1948, revised 1968) which states: I will maintain the utmost respect for human life from the time of conception, even under threat I will not use my medical knowledge contrary to the laws of humanity. **Dorothy McBride Stetson, 2001** *Abortion Politics, Women's Movements and the Democratic State* examines the impact of women's movements since the 1960s on the policy-making processes determining abortion laws. abortion is one of the most easily preventable and treatable causes of maternal mortalities and morbidities. In a study conducted in Dar es Salaam, findings revealed that adolescents used methods to induce abortion that were potentially lethal (**Silberschmidt & Rasch 2001:1823**). **Tiana Norgren, Christiana Norgren, 2001. Raliphada-Mulaudzi, (1999:47)** quotes reports of the Human Sciences Research Council (HSRC) in the RSA, which predicted that legalising TOP services would reduce the number of illegal abortions. Consequently reducing financial pressures on the health care system and impacting favourably on the lives of the women by reducing unwanted births and by reducing mortalities and morbidities arising from illegal abortions. **Ehlers, (1999)** indicates that the success of improving the health of women in Africa is vital and hinges on empowering women to make their own decisions. Such empowerment encompasses socio economic upliftment, increased financial independence of women, improved education for women and access to health services including contraceptives and/or TOPs. According to, **Tetteh & Smith 1999**, women (in the RSA) have played a prominent role in shaping the human rights culture as most of their aspirations and needs are embodied in the Bill of Rights. This is a major contribution to the literature on reproductive rights and the role of civil society in a country usually discussed in the context of its industrial might. According to **WHO (1998)**, unsafe abortion is a global problem and accounts for one in eight maternal deaths in some countries, but contributing at least 13 percent to the global maternal mortality rates. The cost of providing safe TOPs in hospitals or clinics is far less than the cost of treating the effects resulting from "backstreet" abortions (**Sarkin 1996:139**). **Ruth Dixon-Mueller, 1993** - This work presents a forceful argument for a more responsive approach to fertility limitation in developing countries--one that builds on women's concerns about their survival and security and strengthens women's rights. **Deborah L. Rhode, 1989** There is much to be learned from reading this volume. --Victoria J. Dodd, *Bimonthly Review of Law Books* Reviews of this book: A comprehensive journey through the history of law and gender.

METHODOLOGY

The researcher has done an empirical study on the topic. The primary information for the research was collected through field study from 200 selected respondents which included the general public with a well framed and structured survey questionnaire. Convenience sampling method was used to collect the data. The questions put forward in the survey to the respondents were specifically to the consumers. The independent variables used were gender, occupation and educational qualification. The secondary sources used by the researcher for the study are by referring to books, research articles, e-sources, articles, journals, newspapers. The researcher has used graphs to analyze the data collected.

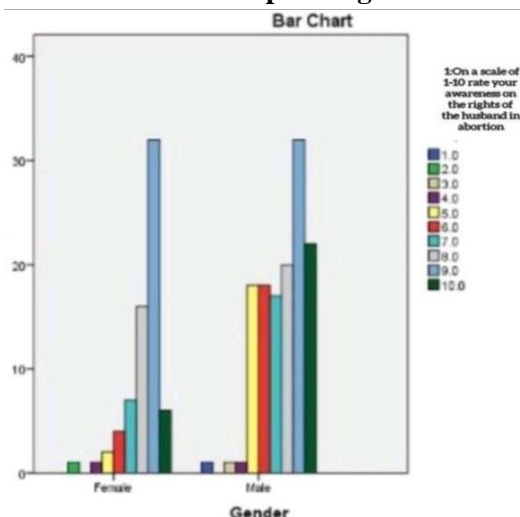
ANALYSIS:

Question 1: On a scale of 1-10 rate your awareness on the rights of the husband in abortion



LEGEND: Figure 1 shows the awareness of the people on the rights of the husband in abortion with respect to their age.

FIGURE 2: With respect to gender

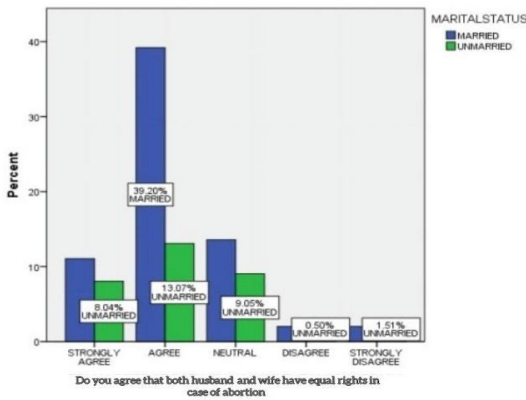


LEGEND: figure 2 shows the awareness of the people on the rights of the husband in abortion with respect to their gender.

Question 2:

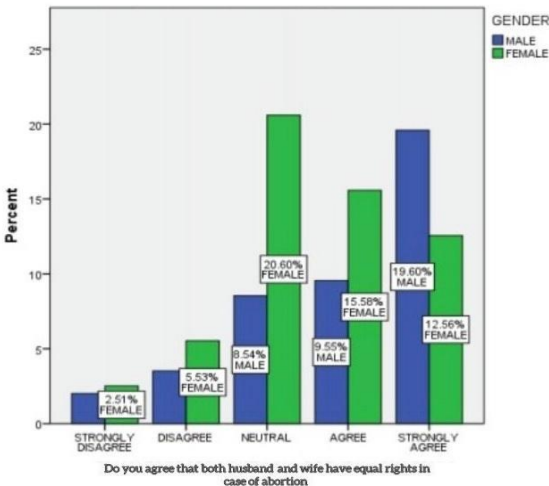
Do you agree that both husband and wife have equal rights in case of abortion

FIGURE 3: With respect to marital status



LEGEND: Figure 2 shows the agreeability On the statement that both husband and wife have equal rights in case of abortion with respect to their marital status.

FIGURE 4: With respect to gender

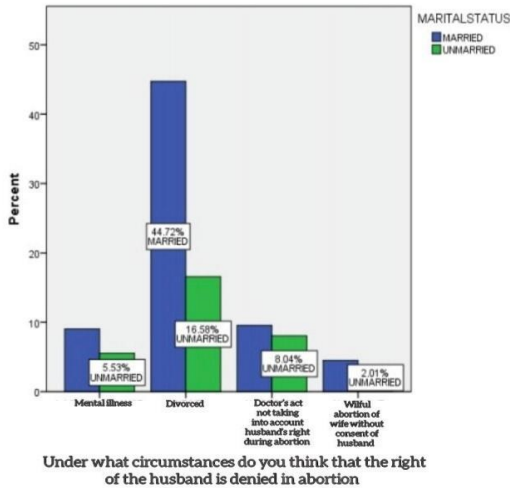


LEGEND: Figure 4 shows the agree ability among the people on the statement that both husband and wife have equal rights in case of abortion with respect to their gender.

Question 3:

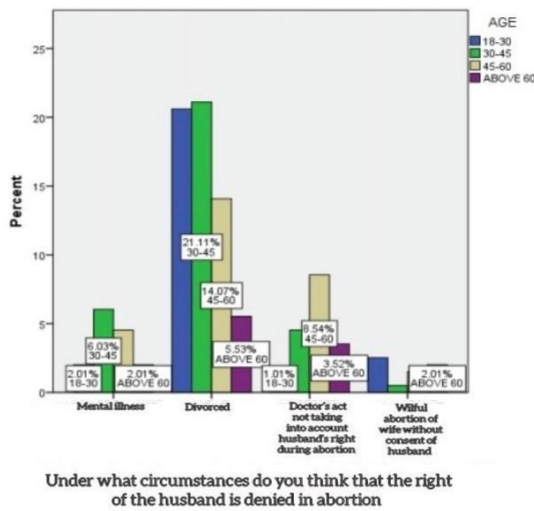
Under what circumstances do you think that the right of the husband is denied in abortion

FIGURE 5: With respect to marital status



LEGEND: Figure 5 shows the opinion of the people as to what do they think as the circumstance where the right husband is denied in abortion with respect to their marital status

FIGURE 6: With respect to age

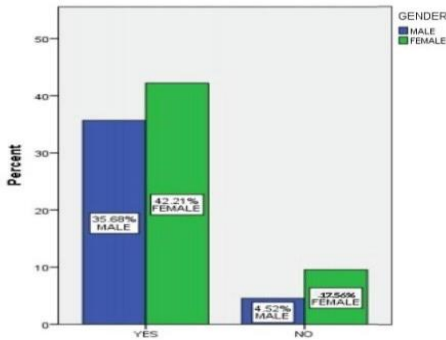


LEGEND: figure 6 shows the opinion of the people as to what they think as the circumstance where the right of the husband in abortion is being denied with respect to their age.

Question 4:

Do you think that the sole right in case of abortion should be given to women ?

FIGURE 7: With respect to gender

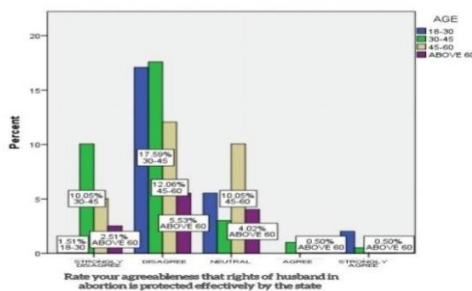


LEGEND: Figure 7 shows the opinion of the people on the statement whether the sole right in case of abortion should be given to women with respect to their gender.

Question 5:

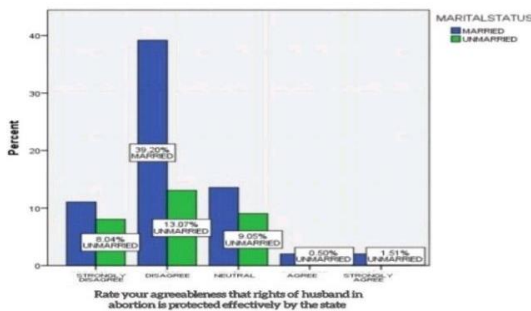
Rate your agreeableness that rights of husband in abortion is protected effectively by the state

FIGURE 8: With respect to age



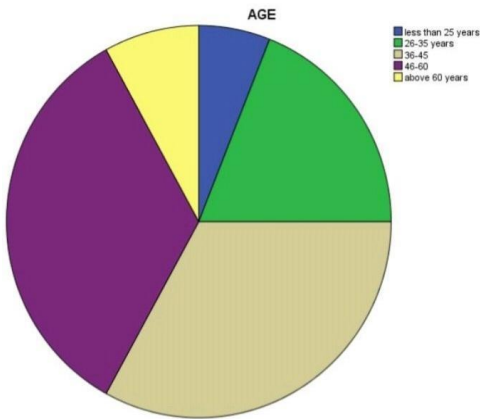
LEGEND: Figure 8 shows the agree ability of the people on the statement that rights of husband in abortion is protected effectively by the state with respect to their age.

FIGURE 9: With respect to marital status



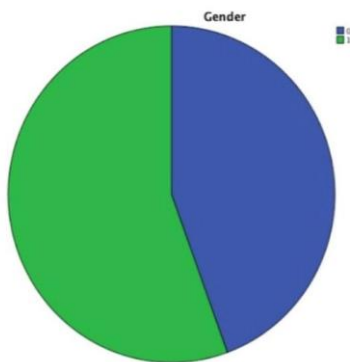
LEGEND: Figure 9 shows the agree ability among the people on the statement that rights of the husband in abortion is protected effectively by the state with respect to marital status.

FIGURE10: Demographic chart with respect to age



LEGEND : Figure 10 represents the total number of respondents with respect to their age.

FIGURE 11: With respect to gender



LEGEND : Figure 11 represents the total number of respondents with respect to their gender.

RESULT:

From **figure 1** we can infer that the people who belong to the age category of 31- 45 have the highest level of awareness where they have rated between 8 to 10 and the people who belong to the other categories are aware to a certain level. The least awareness level can be seen among the people who belong to the age category of above 60. From **figure 2** we can infer that most of the respondents who are married agreed to the statement that both husband and wife have equal rights in case of abortion which is 39.20% which is followed by the unmarried respondents who agree with the same at the rate of 13.07%. Both married and unmarried respondents at the rate of 8.04% strongly agree to the statement where in total only 2% of the respondents disagree with the statement. From **figure 3** we can infer that most of the respondents who are married agreed to the statement that both husband and wife have equal rights in case of abortion which is 39.20% which is followed by the unmarried respondents who agree with the same at the rate of 13.07%. Both married and unmarried respondents at the rate of 8.04% strongly agree to the statement where in total only 2% of the respondents disagree with the statement. From **fig 4** we can infer that most of the female respondents have taken neutral stands at their highest at the rate of 20.60% And 15.58% of the female respondents agree to the fact that both has equal rights whereby 19.60% of male respondents And 12.56%

of female respondents strongly agree with the same which is the highest among all. Only 7.51% of the respondents disagree With the statement. From **figure 5** we can infer that most of the married respondents opinion gives an opinion that divorce as to the circumstances where the husband is denied of his rights in abortion which is the highest of 44.72%. Which is followed by unmarried respondents who think the same which is at the rate of 16.58% next to that both married as well is unmarried respondents opts as to doctors and by not taking into account the husbands rights during abortion as the circumstance where the right of the husband is being denied which is of 8.04%. From **figure 6** we can infer that most of the people who belong to the age category of 18 to 30 and 30 to 45 at the rate of 21.11% and 14.7% opts to divorce as the circumstance Which is followed by the people who belong to the age category of 45 to 60 opts the same. 8.54% and 3.52% of the people who belong to the age category of 45 to 60 and above 60 opts that the act of the doctors by not taking into account the husbands right during the abortion is the circumstance where the husband is right in case of abortion is being denied. From **figure 7** we can infer that 42.21% of the female respondents agree that female should be given the right to abort solely whereby 17.56% and 4.52% of both male and female respondents opposes the statement and states that both women and men should be given equal rights in case of abortion. From **figure 8** we can infer that people who belong to every age category disagrees with the fact that rights of the husband in abortion is protected effectively by the state which is the people who belong to the age category of 18 to 30 disagree with the rate of 17.59%, people who belong to the age category of 30 to 45 disagree with the rate of 12.06% and people who belong to the age category of above 60 disagrees with the rate of 5.53% whereby they stated that the rights of the husband is being denied by the state and they are not protected. Whereby only 1% of the total respondents agree with the fact that the rights of the husbands in abortion is protected by the state. From **figure 9** we can infer that 39.20% of married respondents disagree with the statement which is followed by 3.07% of unmarried respondents who disagree with the same. 9.50% of the total Respondents have taken neutral stance where by 2.51% of the total respondents have agreed with the statement that rights of husband in the abortion is protected effectively by the state.

DISCUSSION:

Most of the people are aware of the concept , where a high level of awareness can be seen among the people who belong to 31 to 45 where by this might be because of the fact that now in recent years every person has access to media platforms as they are in social media and follow the current happenings. Majority of the male members are aware of on the rights of the husband in case of abortion Then female respondents theirs might be because of the fact that they belong to the male community and are aware of their rights, They feel that the rights of the husband is always being neglected in case of abortion where the provisions as well and strongly supports the rights of women alone where The women alone without the consent of the husband can abort according to the provisions now, where the consent and the rights of the husband in case of abortion is being ignored. People agree to the statement that both the husband and wife have equal rights in case of abortion whereby married respondents has higher agreeability than others which might be because of the fact that they are married and they know that they responsibility is equal and the rights as well hence they might support to the fact that they have equal rights in case of abortion. Some people disagree with the statement which might be because of the social stigmas and have understood the concept of feminism in a wrong perspective as well as they do not have much awareness on the concept. As well as people agree to the statement that both the husband and wife have equal rights in case of abortion whereby married respondents has higher agreeability than others which might be because of the fact that they are married and they know that they responsibility is equal and the rights as well hence they might support to the fact that they have equal rights in case of abortion. Some people disagree with the statement which might be because of the social stigmas and have understood the concept of feminism in a wrong perspective as well as they do not have much awareness on the concept. On going with the fact that majority of the male respondents and the female respondents strongly agree with the statement that both the parents both the parents should have equal rights in case of abortion

whereby they this might be because of their awareness level And now as we live in a dynamic society and most of the people or aware of their rights as well thus most of the people agree to the same. Both the respondents who belong to married and unmarried category opts that divorce and the act of the doctors by not taking into account the husbands right during abortion as a circumstance where the right of the husband is being denied which might be because of the fact that they have easy access to social media and knows the current happenings and thus they are aware on the laws as well. People who belong to every category opens that divorce and the act of the doctor by not taking into account the husband's consent during abortion as the circumstance where the husband right in case of abortion is being denied which might be because of the fact that they were aware of the rights of husbands and or aware of sexual equality in childbearing as they share the responsibility. Majority of the female respondents or in favour that females should be given the sole drive to abort which might be because of the fact that they belong to the female community and support their rights and might have wrong perception as to what real feminism is whereby male respondents as well do not deny the fact that females are the persons who bear the child for 10 months, they request that their consent should also be recognised and taken into consideration and sole right to abort should not be given to women where there should be sexual equality in case of abortion and childbirth. People disagree with the fact or with the statement that rights of the husband in abortion is protected effectively by the state which might be because of the fact that they have an easy access to the current updates and as well they have easy access to law And they might have witnessed or heard that the rights which are given for women nowadays are miss used at the high-level which can be said that they are aware by news and news articles, which might have made them aware of the concept that husbands rights in case of abortion is not protected by the state. Majority of the people disagree with the statement that the husbands rains in case of abortion is protected effectively by the state this might be because of the fact that they are aware of the current happenings and the laws which supports only the women and men's rights when it comes to abortion it is always being neglected by the state.

LIMITATIONS:

The limitations to the study include issues with sample and selection, insufficient sample size for statistical measurement, lack of previous research studies on the topic, limited access to data and time constraints.

SUGGESTIONS:

- The government should recognise the rights of husband in case of abortion, we cannot ignore the fact the women only can naturally give birth but it cannot be done without men. Mens right most obviously father's rights are being forgotten and not yet recognised by the society, hence the government should recognise the rights of husband in abortion.
- Consent of husband should be given priority as well thus there should be sexual equality in case of abortion. When we look into Chinese abortion laws it directs sexual equality.
- In cases where the couple want to abort mutually then there is not much problem where they can approach a doctor and according to the guidelines it can be done. It becomes an issue when one wants to abort and the other don't hence they should be directed in such cases to counseling where they should be made to understand the pain of the other couple and hence there is high probability of them being convinced .
- Finally all the people should be made aware of their rights whereby the government should recognise the rights of husbands not standing one side.

CONCLUSION:

In the recent years, Indian abortions laws have become quite progressive, women finally have an assurance of their rights in abortion. However, since there's no mention of father's rights in an abortion, there's a long way to go for an ideal law in place for abortion. This may seem fair to some, but since our Constitution of India guarantees equality as a basic human right, minor changes in favour of fathers' rights are now expected for a step further towards equality. Since both parents are responsible for childbirth, wants of both parents shall be considered for an abortion. Fathers are generally liable to provide financially for the needs of the child despite their wish of remaining childless, in some cases. Since there's also no need to inform the father of the pregnancy, it isn't discovered until after the birth of the child whether the father was prepared to take the responsibility of a child, financially. In India, the mother's rights in abortion are considered to be primary, and the father is left with no rights at all. Few years back, it was reported that Indonesia, Malawi, Syria, United Arab Emirates, Equatorial Guinea, Kuwait, Maldives, Morocco, South Korea, Saudi Arabia, Japan, Taiwan, and Turkey, all had laws that required that an abortion first be authorized by the woman's husband. All the mentioned countries provide equal rights to the father and the mother in case of abortion. They consider that it is the decision of both the parents and since they will be taking care of the child further and are liable for the act done by them. Even if the pregnancy is abnormal, consent of both parents should be taken into consideration.

While discussing the abortion issue, it's important to remember that the rights of the father must be respected while making family planning options that include abortion. The rights of father are viewed as secondary to the mother however both have an equal responsibility towards the unborn child. As a result, there is a pressing need to not only increase awareness about this "little talked about" topic, but also to press the Indian judicial system to abandon old preconceptions and give fathers an equal say, if not in all cases, then at least in some. In contemporary times, parents play an equally important role in raising children, and their importance can in no way be reduced by marital disharmony between couples. There should be a law that gives the father the same rights as the mother in deciding whether or not to abort the kid. In many circumstances, women may not want to bear the kid in order to retain their physical form or simply because they do not want to be responsible for the child. What the child's father thinks isn't taken into account. As a result, a revision to the MTP Act about the father's approval for abortion in the pregnancy wise be a highly unbalanced domain is required. Thus the researcher concludes the research by stating the output of the research most of the people points towards the sexual equality in case of abortion as well they support that husband's rights should be recognised as well by the government they and their rights should not be ignored, finally the government should recognise the rights of the fathers in abortion and child bearing whereby absolute right shall not be given to women alone husbands consent should be recognised.

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