

## **MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2002 AN ANSWER TO MOTHER'S HEALTH & 'FEMALE FOETICIDE'**

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### **ABSTRACT**

Human groups have, since early times, developed attitudes against the willful destruction of a foetus. At the same time, they have also recognized its permissibility in exceptional circumstances. Abortion raises a variety of medical, legal, ethical, and social issues. Indian Law recognizes the foetus as a special aggregation of cells with a potential for independent life and in this way protects the rights of 'unborn child'.

This paper deals with issues related to abortion laws, reasons for their enactments, amendments and failure to implement, misuse by quacks, with special reference to The Medical Termination of Pregnancy (Amendment) Act, 2002, and Rules & Regulations, 2003. Thus, an attempt to answer for related questions either not discussed earlier or not answered effectively and clearly so that problem of increased rate of maternal mortality & morbidity' and 'female foeticide' could be dealt with effectively.

**Kew Words:** Abortion, Approved, Consent, Conception, Miscarriage.

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### **INTRODUCTION**

#### **Abortion Through the Ages**

Foeticide was prohibited and classified as murder, equal to neglect of Vedas, Incest, and Drinking of Spirituous Liquors. Man even considered a woman as murderer of her Husband or of Brahmin or as an 'Outcaste' who had undergone abortion. The Buddhist, who condemned the destruction of life, laid down that Bhiku "who intentionally destroys a human being by way of abortion, is no Samana and no follower of Sakeyaputra". As per Gandhi Ji "abortion was more in violation of the principle of the 'ahimsa' than the artificial birth control which was morally blameworthy". The 'Holy Quran' prohibits the killing of child. Astray have gone those who stupidly kill their children without knowledge and deny to themselves of what Allah has blessed them with. The Didache, an authoritative source of Christian Law, considered abortion, as a grievous sin and was included in the 'Ten Commandments', which contain the forbidden acts. Every Human being including the 'unborn child' in the womb of its mother receives the right to life directly from the Almighty God but not from parents, society or any other authority.

#### **Ethical Aspect of Abortion**

Similarly, the 'Hippocratic Oath' (in one of its versions) forbid physicians to prescribe or perform abortions and it based on the concept that human life begins at conception. The Declaration of Geneva, 1948 & the Declaration (Appendix-1) by doctors at the time of registration before the State Medical Council, oath of Medical Ethics in Point-31 maintained the same sanctity of life as "I will maintain the utmost respect for human life from the time of conception".

#### **What is 'Female Foeticide'?**

Any act of destruction of female foetus amounting to female foeticide shall be regarded as professional misconduct on the part of the physician leading to penal erasure besides rendering him liable to criminal proceedings[1] (Chapter VII, Point 7.6, 7.15).

#### **Statistics of Abortion**

The actual worldwide incidence of abortion is not known. Estimates range from 30-55 million a year or about 40-70 per 1000 women of reproductive age, with an abortion ratio of 260-450

per 1000 live births[2]. In India it has been computed that about 6 million abortions take place every year of which four million are induced and two million spontaneous[3].

Induced termination of pregnancy whether in hands of skilled or unskilled persons are always fraught with health hazards, leading to increased incidence of 'maternal mortality' and 'morbidity' especially when performed in 'unsafe' & 'unhygienic conditions'. An ICMR bulletin puts the unofficial figure at 11 million and almost half the maternal deaths in the 15-19 age groups are due to 'unsafe abortions'. The number of these deaths could drop dramatically with increased contraceptive use. "Where pills and other contraceptives were made widely available, maternal deaths caused by abortions declined by 56 percent between 1989 and 1997" -New York Times report in Russia [4]. Where abortions are legal and statistics relatively accurate, the mortality ratio ranges from 1 to 3.5 per 100,000 abortions in developed countries[5]. In India, mortality is reported to be 7.8 per 1000 "random abortions"[6]. This could be attributed to that most of the abortions are illegally induced. Data indicate that the seventh and eighth week of gestation is the optimal time for termination of pregnancy[7]. Studies indicate that the risk of death is seven times higher for women who wait until the second trimester to terminate pregnancy [8].

### **What is 'Abortion'?**

#### **'Abortion' is defined in so many ways as follows**

The term 'abortion' is derived from the Latin word 'aboriri', which means "to get detached from the proper site" [9]. In medical usage, 'abortion' means: "the termination of pregnancy before the period of viability" or "expulsion or extraction of all or any part of the placenta or membranes, without an identifiable foetus, a 'live born infant' or a 'still born infant', weighing less than 500g, but in the absence of known weight an estimated length of gestation of less than 20 completed weeks (130 days or less) calculated from the first day of the last normal menstrual period, may be used". It is a term referring to the birth process before the 20 completed week of gestation[10] or "destruction of life after conception and before birth"[11]. 'Miscarriage' is synonymous with 'abortion' and consists in the expulsion of the 'embryo-foetus' at any time before it reaches full growth. Legally,

'miscarriage'[12] means the premature expulsion of the product of conception (an ovum, embryo or a foetus) from the uterus, at any time before the full term is reached. Law recognizes the foetus as a special aggregation of cells with a potential for independent life and in this way protects the rights of an unborn child such as:

- The right to inherit,
- The right not to be harmed by drugs, and
- The right to bring a tort action (through legal representatives) [13].

### **Current Scenario of the Problem**

In recent years, in view of increased number of 'female foeticide' leading to change of male to female sex ratio and increased rate of maternal mortality & morbidity, need was felt for amendments in abortion law. More than 100000 women in India who die annually during pregnancy and childbirth, 10000, deaths are due to 'unsafe abortions'. Currently there are 9806 private hospitals approved for abortions[14]. If statistics are anything to go by, the rich seem to be murdering their daughters. While the overall sex ratio in the country seemed to have improved from 927 to 933 in last decade as per 2001 Census, the overall sex ratio of the 0-6 years population of children has shown a decline from 945 to 927. Desegregations of the Census data revealed the disturbing trends of very poor sex ratio among the rich and literate. Earlier, it was thought that female foeticide and unwantedness of girls was more among the poor and the illiterate[15], Prosperity, intellectual or otherwise does not necessarily mean a change in social attitudes towards gender bias. A critical review of MTP Act was also emphasized these aspects [16].

### **Chronology of Events of Abortion Laws**

The provisions regarding abortion law in the IPC[12] were enacted, more than a Century ago. These were drafted at that time keeping with the then British Law on the 'abortion'. The MTP Act, 1971 though appears to be enacted for control of population of India but the provisions were actually enacted to provide for the termination of certain pregnancies by the Registered Medical Practitioners (RMP) for protection and preservation of the lives of women.

Under the provisions of different IPCs[17], abortion was made a crime for which the mother as well as the alleged abortionist could be punished, except in the circumstances where it had to be performed in order to save the life of the mother, This was very strict law in terms of punishment, but it was very difficult to implement, in the lack of evidences and non-availability of witnesses. These changes in abortion law are made in conformity with Shantilal Saha Committee's recommendations in August 1964, 1966 and Declaration of Oslo-1970 of WMA.

After the enactment of the principal Act, latest amendments were done in 2009, while rules were framed for the first time in 1972 [20], amended in 1975 [21], 1977 [22] and recently in 2003 [13]. In 1975 regulation were introduced for the first time [23] and recently amended in 2003 [24]. Latest amendments are based on the recommendations of the 'expert group committee' formed in 1997, and suggestions of the National Women's Rights Commission (as a measure to prevent cases of 'female foeticide') along with the experience gained in the implementation of the MTP Act.

### **Aim & Objectives of Amendment**

- To make the MTP Act, 1971, more relevant to the current scenario of the India.
- To remove provisions which were discriminatory to women (practice of 'female foeticide').
- To provide strict & enhanced punishment for the violations of the provisions of the Act.
- To save the RMPs from the purview of the IPC.
- To legalize termination of pregnancy on various socio-medical grounds.

These amendments are done in Sections: 2, 3, 4, and 5 as follows:

### **Regarding 'Mentally ill Person'**

Much needed amendment regarding substitution of term "lunatic" with "mentally ill person" is done to make it in conformity with the recent law on mental health. Prior to its substitution, Sec, 2 (b) read as: "lunatic has the meaning assigned to it in Sec.3, of the old law on mental health [27], "Mentally ill person" means a person who is in need of treatment by reason of

any mental disorder other than mental retardation [19], thus, gives broader meaning to the term.

### **Regarding 'Consent'**

#### **Consent of Women**

In case of a 'major' woman i.e. who has attained the age of 18 years, consent in writing in 'Form C' (Rule 9) is required before MTP [13].

Consent of Guardian in Writing: 'Guardian': person having the care of the 'person of a minor' or a 'mentally ill person' {Sec.2 (a)}

a. In case of a 'minor', i.e. less than 18 years of age, {Sec. 4 (a)}

b. In case of 'mentally ill person' even she has attained the age of 18 years [19].

No pregnancy shall be terminated except with the consent of the pregnant woman {Sec. 4(b)} [19], needs explanation. Why 18 years of age for consent? Why not 12 years? Questions may be raised, and answers appear to me that because of age of marriage' is 18 years for female, and also to discourage sexual intercourse outside the institution of marriage. Mere statement of woman in writing that she having attained 18 years of age is sufficient, i.e. no proof of age is required.

### **Court's Views**

The MTP Act does not confer or recognize any right on any person to perform an abortion or termination of pregnancy. Even the pregnant woman cannot terminate the pregnancy except under the circumstances mentioned in the Act. Even during the 'first trimester', the woman cannot abort at her will and pleasure, There is no question of "abortion on demand". Sec.3 [18] is only an enabling provision to save the RMP from the purview of the IPC. Court further added that "termination of pregnancy under the provision of the Act, is not the rule and it is only an exception" [25].

A two Judge Bench of the Madras High Court, in its landmark judgement held that "a minor girl has the right to bear a child" [25,28,29]. No doubt the court is bound to presume, as the expression used is "shall be presumed". But such presumption can be rebutted on the facts. Even if it is presumed that the pregnancy is caused by rape, there is no

question of anguish caused by such pregnancy in the pregnant woman particularly when the girl was very keen to continue the pregnancy and bearing the child. Hence, the continuance of the pregnancy will not cause any injury to her mental health[25].

### **Confidentiality of Records: {Regulations 4 (6)} 24**

The Consent in 'Form C' (Rule 9) [13], together with the 'Certified Opinion' 'Form-I' [13], the intimation of termination of pregnancy shall be placed in an envelop, sealed by the RMP(s) by whom such termination of pregnancy was performed, until that envelop is sent to the head of the hospital or the CMO of the District, it shall be kept in the safe custody of the concerned RMP(s) as the case may be. On every envelop there shall be noted the Serial Number assigned to the pregnant woman in the admission register Form-III (Regulation-5) [24], the name of the RMP(s) by whom the pregnancy was terminated, and such envelope shall be marked "secret". Every envelope shall be sent immediately after the termination of the pregnancy to the head of the hospital or owner; on receipt of the envelope, keep the same in safe custody.

Not only maintenance of confidentiality of record, assurance to the patient for the same is more important. Abortion, being a social taboo, is one of the most important reasons for pregnant woman to contact 'Quacks' in 'unsafe' and 'unhygienic' conditions. Thus, leading to increased incidence of, 'mortality' and 'morbidity' of pregnant women.

### **Privileged Communication: (Point 7.14) 1**

Regulations [23, 24] imposing the restriction on the disclosure of the information contained in admission register to any person except:

- To the Chief Secretary to the Govt. in the case of departmental or other enquiry.
- To a Magistrate of the First Class within the local limits of whose jurisdiction the approved place is situated, in the case of an investigation into an offence.
- To the District Judge within the local limits of whose jurisdiction the approved place is situated, in case of suit or other action for damages.

The RMP shall, on the application of an employed woman whose pregnancy has been terminated, grant a certificate for the purpose of enabling her to obtain leave from her employer.

Note: any such employer shall not disclose this information to any other person because the employer is restricted from disclosing the information as to the MTP of his female employee to any person.

Grounds for MTP: {Sec. 3 (2), (i), (ii), (3)} [18,19] (Point 7.15) [1]

### **When**

- The continuance of the pregnancy would involve a risk to the life of the pregnant woman, or
- Risk of grave injury to her physical or mental health; or
- There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped,
- Where, any pregnancy alleged by the pregnant woman to have been caused by 'Rape',
- Where any pregnancy occurs as a result of failure of any device or method used by any married woman or his husband for the purpose of limiting the number of children.
- Where any pregnancy is alleged by the pregnant woman to have been caused by 'rape', or occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children.

The anguish caused by such unwanted pregnancy presumed to constitute a grave injury to the mental health of the pregnant woman. In these cases account may be taken of the pregnant woman's actual or reasonable foreseeable environment (Explanation-I&II) [18, 19]. Pregnant woman's allegation is sufficient to do MTP on this ground.

Who can do MTP?

### **Any 'RMP' with following qualifications and / or experience [13]**

- If he has completed six months of 'House Surgency' in Gynaecology and Obstetrics {Rule-4 (b), (i)} [13]

- If he had experience at any hospital for a period of not less than one year in the practice of Obstetrics and Gynaecology. {Rule-4 (b), (ii)}
- Who holds a Post Graduate Degree or Diploma in Gynaecology and Obstetrics. {Ru1e-4 (d)}
- If he has assisted a RMP in the performance of 25 cases of MTP out of which at least five have been performed independently, in a hospital established or maintained, or a training institute approved for this purpose by the Government, {Rule 4 (c)}. But this training would enable him to do only 1st trimester terminations i.e. up to 12 weeks of gestation {Rule 4 (c), (i)}. -

The term "RMP" used in this Act have different meanings at different places, Sec. 2 (d) 18, Sec. 2(h) I. In other words, a doctor, whose name has been entered in a State Medical Register and who has such experience or training in Gynaecology and Obstetrics as prescribed in Sec.4 (a, b, c, d).

### **Experience & Training: (Sec. 4) [13]**

- Up to seven Weeks.
- Up to 12 Weeks MTP, {Sec. 2 (d)}.
- 12 to 20 Weeks MTP, {Sec. (2) (a, b, c)}.

Where pregnancy may be terminated? (Sec. 4)

- a. A hospital established or maintained by government, or
- b. A place approved by 'District Level Committee' (D.L.C.).

Provided: that the D.L.C. shall consist of 3 to 5 members including the Chairperson.

Approval of Place: (Rule-5) [20]

- Up to Seven Weeks, conservative with -RU-486 (Mefipriston & Misoprostol).

Who can prescribe 'RU-486'?

Any 'RMP', [1,13,18,19] may prescribe it at his Clinic,

**Provided:** such RMP has access to a place, approved and display such certificate of access at some conspicuous place obtained from the owner of the 'Approved Place'.

Up to 12 Weeks MTP:

Place may be approved with following facilities: {Rule-5 (I) (ii)}

- Gynaecology Examination Table / Labour Table,
- Resuscitation and Sterilization Equipment,
- Drugs and Parental Fluids,
- Backup facilities for treatment of shock, and
- Facilities for Transportation.

Up to 20 Weeks MTP:

Place may be approved with following facilities: {Rule-5 (1) (ii) a, b, c}

- An Operation Table and
- Instruments for performing Abdominal or Gynaecological Surgery;
- Anaesthetic Equipments, Resuscitation and Sterilization Equipment; and
- Drugs and Parental Fluids for Emergency use, as notified by Government of India from time to time.

### **Procedure for Approval**

Complicated procedure of approval and bureaucracy was supposed to be one of the important reasons for 'unsafe abortions' in 'unhygienic conditions' and 'unapproved places', now simplified. Power of approval is shifted from state level to the District level. Application in "Form-A" (Rule-5 (2), addressed to CMO of the District, who may Verify / Inspect / Enquire and after satisfying himself, recommend the approval of such place to the "District Committee" having at least three members. District Committee after consideration approves such place and issues a 'Certificate of Approval' in "Form-B". {Rule-5 (6)} [13]

### **Provision of 'District Level Committee': {Rule-3} [20]**

#### **Composition**

One member shall be the Gynecologist / Surgeon / Anesthetist, and other members from the local medical profession, NGOs and Panchayat Raj Institution of the District (3-5 members), at least one of them shall be a woman.

#### **Tenure**

For Government Member two calendar years, and Non-Government Member shall be not more than two terms (i.e. maximum 4 years).

## Display of Certificate

It should be conspicuously displayed at the place to be easily visible to persons visiting the place. {Rule-5 (7)} [13]

## Duty of District CMO

In case of death, or injury to a pregnant woman or unsafe and unhygienic condition, he may call for any information or may seize any article, medicine, ampoule, admission register or other document, maintained, kept or found at the place of MTP. {Rule-6 (2)} [13]

## Who can be 'Punished for Violation'?[19]

- Termination of pregnancy by a person, who is not a RMP. The possession by RMP of experience or training in Gynaecology and Obstetrics i.e. provisions of Sec.2, (d) shall not apply (Sec. S (2) (Explanation- 2) .
- Whoever terminates pregnancy in a place that is 'unapproved' (Sec. 5 (3) .
- Any person, being 'owner' of a place that is not approved, and doing or allowing the termination of pregnancy at such place (Sec. 5(4) .

The expression "owner" means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name (DM, MS, DP etc.) called. {Sec.5 (4) Explanation- 2} .

## What is the 'Punishment'?[19]

Termination of pregnancy in violation of provisions of the Act 19 is an offence punishable with Rigorous Imprisonment (R.I.) for a term which shall not be less than 2 years but which may extend to 7 years. {Sec.5 (2), (3), (4)}

Note: It is important and worth wise to mention here that it is now a cognizable offence for which a police officer can arrest a doctor for violations without warrant.

## Violation of Regulations [19]

If a person willfully contravenes or willfully fails to comply with the requirements of any regulation made punishable to 'One Thousand Rupees'. {Sec.7 (3)}

## SUMMARY & CONCLUSION

Effective implementation of changed laws in letter and spirit, both by law enforcing agencies and medical fraternity. Surprise visits by District Committee members to ensure effective implementation of these laws. Authors and editors of books covering topics on 'abortion', especially of Forensic Medicine, Community Medicine and Obstetrics & Gynaecology should include recent changes in these laws. Examiners in these subjects should ask questions in theory and viva-voce examinations in their respective subjects on new provisions of 'abortion laws'. Ensuring full confidentiality to patients so that they can come to approved places instead of going to 'quacks' in the 'unsafe' and 'unhygienic' places in the fear of social stigma attached to abortions. Creating awareness about new laws among medical fraternity, law enforcing agencies and public about benefits of these laws by organizing symposium, seminar, workshop, etc. NGOs and mass media should play their much-needed role in both creating awareness and exposing conducts of 'quacks'.

The ultimate aims of these amendments (2002) are: To eliminate the incidence and prevalence of abortions by: Untrained persons (quacks); and in Unsafe & unhygienic conditions, so that reduction in the 'maternal mortality & morbidity' could be achieved and crime of 'female foeticide' dealt effectively.

Thus, by following these suggestions we all can contribute our role towards society in reducing 'maternal mortality' and 'morbidity' and can prevent wastage of pregnant women's strength, health and above all life. Effective implementation of these laws can also contribute in preventing most heinous crime against humanity i.e. 'female foeticide'.

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