

Abortion Rights of Women: An Overview of Medical Termination of Pregnancy Act

Anand Jagmalani¹

Abstract

Abortion is the deliberate termination of human pregnancy, most often performed during the first 28 weeks. In India, there were no abortion rights mentioned for women in the books of law, because of which many women had to opt for illegal means to abort the child. This consequently was harmful to the life of the mother. Abortion was considered to be sordid for the society as it is killing of a human life. Hence it was considered as a crime under the Indian Penal Code. Medical Termination of Pregnancy Act was then passed in 1971 to provide abortion rights to women in some specific conditions. This act mentions that termination of certain pregnancies by registered medical practitioners and for matters connected therewith on incidental thereto.

Now in India, women can abort a child till 20 weeks with respect to some specific circumstances under Medical Termination of Pregnancy Act, 1971. Abortion rights are also given to women by other developing countries in the world. These rights are also an essential part of human rights and are recognized in many international conventions. There are some changes which need to be brought that will be helpful for women. This paper will focus on the reproductive rights of women provided by Medical Termination of Pregnancy Act and the Constitution and highlight the issues related to this Act with considerable solutions which will protect their interest.

¹ Student, Amity Law School, Mumbai.

Introduction of Abortion

In India abortion is considered as a sin. It is likely to be considered as killing a human being. So what is basically an abortion? Abortion is the term which is derived from the Latin word ‘aboriri’, which means “to get detached from the proper site”. In terms of medical usage, it 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 or known weight an estimated length of gestation of less than 20 completed weeks calculated from the first day of the last normal menstrual period, may be used”.

Abortion is the ending of the pregnancy before birth which results in the death of an embryo or a foetus.

There are two types of abortion

1. Miscarriage: it is also known as spontaneous abortion. A miscarriage happens naturally. If any person has committed this offence voluntarily shall be punishable under section 312 of the Indian penal code.
2. An induced abortion: it is usually called termination of pregnancy. An induced abortion is deliberate. It is done according to the consent of the women. The induced abortion is legalised in many of the foreign countries including India. But it cannot be exercised by choice and can only be performed in respect to some grounds mentioned under the MTP Act, 1971.

Ways of doing Abortion

There are two ways in which abortion can be done

1. Medical abortion

This type of abortion is used if it has to be carried out in the first 9 weeks of the pregnancy. It is a type of pill. It does not involve any surgery, only a pill has to be taken. In this method, the result will lead to symptom like a heavy and painful period

2. Vacuum aspiration

It is also called sucking method. Abortion takes place between 9 to 13 weeks. In this sucking is applied to remove the contents of the uterus and the pregnancy is terminated. The result will not involve any stitches and so there is no wound. Monthly healthy women can go home the same day.

60% of the world’s population stays in countries where “induced abortions”, are allowed on relatively liberal scale. But about 1/4th of the world’s population reside in places where

“induced abortions’ are completely allowed or allowed when the lady’s life is at risk. According to a medical data collected worldwide, 25% of all pregnancies have resulted in abortions between the years 2010-2014. Due to legal restrictions and technical defaults only half of them were safe.

In India, abortion rights are legalised since the year 1971 which gives the rights of abortion to women. It was governed by Medical Termination of Pregnancy Act, which was enacted in 1971 and implemented in April 1972.

Evolution of Abortion Laws in India

The right to abortion was not allowed in many of the middle ages countries till 1900. Union of soviet socialist republics became the first nation to allow termination of pregnancy in the year 1920. Nazi Germany has practiced selective abortion in the year 1933, which was then followed by Japan and many European countries.

During that time the liberalising of abortion in the west, European nations and many other countries bought the change in this concept. The abortion at that time was a crime in India which was dealing under section 312-316 of the Indian Penal Code which was enacted a hundred years ago during British rule. In 1960s, due to illegal and unsafe abortions the material mortality rate was high. Therefore, there was a need of liberalising the laws of abortion in India like other countries. There was a need for Proper law and mechanism on rights of abortion.

In 1964 Government of India appointed the Shah Committee for a comprehensive review of social, legal and medical aspect. The Committee, in 1966, recommended liberalising the concept of abortion for the betterment of women’s health. The Bill for Medical Termination of Pregnancy was passed by both the houses in 1971 and came into force in 1972. The Medical Termination of Pregnancy Act, 1971 was enacted with the purpose to liberalise and to provide a proper mechanism over Abortion in India.

Comparison of Abortion laws with other countries

United States

United States witnessed a landmark case in 1973 and introduced the concept of fetal viability. It was held that abortion laws of Texas which criminalises abortion except to save the life of the mother which is violative of the 14th amendment act of the United States constitution. It was also held that in 14th amendment the word was mentioned ‘person’ which does not include unborn child. The abortion laws in USA varies from state to state. According to a

report of centers for disease control and prevention there were 210 abortions were conducted per 1,000 live births in 2012.

United kingdom

The Abortion Act has been passed in UK in 1967 which made this concept legal. The pregnancy in UK can be terminated by licensed medical professional. It must be signed off by other two doctors. The acceptance is based on the discretion of the doctor if they find any complications in the abortion process.

Malta

Malta is the only country in European Union to totally ban abortion, which also imposed jail terms if the law has been broken between 18 months and three years. It has been criticized by their neighbouring countries. Malta is one of the fewest countries in the world which possess the strictest abortion laws and bans abortion in all circumstances, even when the life of the woman is in danger. The laws are strict because of the political power in that country.

Legal perspective of Abortion Laws

Medical Termination of Pregnancy (MTP) Act, 1971

Termination of pregnancy act has been enacted in 1971 and started its implementation from April 1972. This Act was established with the motive to improve the material health of Indian women and control the mortality rate which was the result of unsafe and illegal abortion in the country. The preamble of the act also stated the purpose of this act as “An act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto”.

When this act was enacted it was criticised by many politicians and social workers, it was contended that the government is trying to reduce the population of the country by legalising this concept.

Legally, according to this act, abortion can only be done upto the 20 weeks of conception.

Features of MTP Act, 1971

1. Legality

This act has legalise the abortion in India. Legally, according to this act, abortion can only be done upto the 20 weeks of conception.

2. Grounds of abortion

The abortion is not a choice of woman. It is based upon the circumstances. This act mentions four situations in which a woman can abort her child.

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

- If the continuation of the pregnancy would lead to the life of the mother in danger, physically or mentally.
- If the pregnancy would lead the child suffer physical or mental abnormalities.
- If the pregnancy has occurred as a result of failure of contraception. But this was only applied when the woman is married.
- If the pregnancy have been caused by ‘rape’ or ‘assault’.

These are the only grounds on which pregnant women can undergo abortion.

3. Registered medical practitioners²

This act states that a person will not be held guilty if he is acting within the ambit of the act. He will not be held guilty if the pregnancy is terminated in accordance with the provision of this act. This act authorise registered medical practitioners to terminated the pregnancy if the period of pregnancy does not exceed 20 weeks. This act of practitioners should be in good faith considering the grounds of pregnancy mentioned in this act. It will be only the discretion of doctor whether to undergo the abortion and not the decision of women. If the abortion is to take place within 12 weeks of pregnancy (first trimester), a women will need only one doctor to sign off and if the abortion is to take place between 12 weeks to 20 weeks (second trimester), women will be in need of two doctor to sign off.

4. Places for abortion³

The abortion will be held only in the hospital which is established or maintained by government or a place which is approved by the government for the purpose of this act.

5. Power to make rules and regulations

The central government has the power to make ruled by notification in the official gazette. The state government has been granted the power to make laws related to the jurisdiction of this act.

6. Role of judiciary

There is no role of court before 20 weeks of the pregnancy. If the complications arose after the 20 weeks of pregnancy, then the person has to ask the court for the permission to abort child.

Medical termination of pregnancy (amendment) Act, 2002 and Rules 2003

The MTP Act, 1971 has been amended in 2002 as to adapt the current scenario of India. There were certain provisions of the previous act which were discriminatory to women, so this amendment was done to remove those provisions like practice of female feticide. The

² Medical termination of pregnancy Act, 1971, No, 32, Acts of Parliament (India)

³ Medical termination of pregnancy Act, 1971, No, 32, Acts of Parliament (India).

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

punishment in the previous act was quite liberal, the provisions to make the laws quite strict so that people should think twice before violating the provisions of this act. There was the need to save registered medical practitioners from the purview of Indian Penal Code.

Amendments in this act are as follows

1. The word “lunatic”⁴ was substituted with “mentally ill person”⁵.
2. In case of women above 18 years of age her consent in writing is required before termination of pregnancy. In case the women are before 18 years of age, her guardian’s consent in writing is required.⁶
3. The MTP act does not confer the right of abortion on demand. A pregnant woman cannot abort her child except the grounds for abortion mention in this act.⁷
4. The consent (form C) with certified opinion (form1) should be placed in an envelope and should be kept with medical practitioner and submitted to CMO of the district properly.
5. Qualification of Registered Medical Practitioner
 - 6 months of ‘House Surgery’ in Gynaecology and obstetrics
 - Worked in hospital for a period not less than one year as obstetrics and gynaecology
 - If he holds the a post graduate degree or diploma in gynaecology and obstetrics
 - If he has assisted a Register Medical Practitioner in 25 cases of MTP and performed at least 5 cases independently, in a hospital provided for this purpose by government.
6. Complex procedure for approval remains the same because the reason of “unsafe abortions”.

Provisions of ‘District Level Committee’

1. Composition
 - one member shall be gynaecologist or surgeon or anaesthetist
 - other form local medical profession, NGO’s and Panchayat Raj Institution of District, at least one of them should be a women.
2. Tenure
 - For government Member- 2 years
 - For Non-Government Member- 4 years

Medical termination of Pregnancy Bill, 2014 and 2017

⁴ Medical Termination of Pregnancy Act, 1971, No, 32, Acts of Parliament (India).

⁵ The Medical Termination of Pregnancy (Amendment) Act, 2002, No, 64, Acts of Parliament (India).

⁶ The Medical Termination of Pregnancy (Amendment) Act, 2002, No, 64, Acts of Parliament (India).

⁷ Medical Termination of Pregnancy Act, 1971, No, 32, Acts of Parliament (India).

Human Rights vis-a-vis Justice System in Present Era : A Publication of Jus Dicere

This amendment bill was drafted in order to empower women with deduction of number of unsafe abortions. There were some draft provisions which were proposed in this bill

1. The words ‘registered medical practitioners’⁸ were replaced by ‘registered health care providers’. This says that not only the registered medical practitioners but practitioners qualified in homeopathy, ayurveda, unani or siddha, nurses or auxiliary nurses’ midwives can also perform abortion.⁹
2. It also increases the period to conduct abortion from 20 weeks to 24 weeks.
3. A woman in consultation with a registered health-care provider can take an independent decision.
4. It amends section 3¹⁰ of the previous act, “the length of pregnancy shall not apply” in a decision to abort a foetus diagnosed with “substantial foetal abnormalities” of if it is “alleged by the pregnant woman to have been caused by rape”.

Critical Analysis

20 week bar

In the Medical termination of pregnancy act, 1971, it was state that a woman can abort her child till 20 weeks of pregnancy. This provision was incorporated to prevent the gender prediction or gender selection abortions because at that time the test to select the child was only been conducted after 20 weeks. But now due to advancement in the technology, this test can be conducted much before and the sex of baby can be determined as early as seven weeks of the pregnancy with just new blood test. Chorionic villus sampling (CVS) can be conducted around 10th to 12th week.

Now it was proposed that this period of 20 weeks should be increased to 24 weeks as doctors are saying that it is absolutely safe to abort a child upto 24 week of pregnancy. The point on this bar of 24 week has been set is totally different to the reason on which the bar they are increasing.

But this bar should be increased because the foetal abnormalities are shown up only after 18 weeks of pregnancy, so it would be very difficult for the women and her family to decide about the abortion of the baby. Two weeks of time is very less to take big decisions like abortion. Even for the medical practitioner also, the time of two weeks is very less to extract all the possible options before advising anything to patient.

⁸ Medical termination of Pregnancy Act, 1971, No, 32, Acts of Parliament (India).

⁹ The Medical Termination of Pregnancy (Amendment) Bill, 2017, Bill No. XXV of 2017, Draft Medical Termination Of Pregnancy (Amendment) Bill, 2014.

¹⁰ Medical Termination of Pregnancy Act, 1971, No, 32, Acts of Parliament (India).

But termination of pregnancy till 24 month should only be allowed in case if the health of mother or child is in danger physically or mentally. There is no point in allowing a victim of rape and sexual assault as they knew from the first day of pregnancy that they don't want this child.

Registered Medical Practitioner

It was proposed that in MTP Act, words 'registered medical practitioners' be replaced with 'registered health care providers'. This clearly states that apart from the medical practitioners, practitioners qualified in Homoeopathy, Ayurveda, Unani or Siddha, Nurses or auxiliary nurse midwives. This provision will logically not be valid. As according to a study, medical abortion includes of use of allopathic drugs which is never taught to practitioners of homoeopathy, Ayurveda etc. till now there are no such homoeopathic or ayurvedic drugs, which can be used for medical abortions.

Approval of two doctors

It has been stated in the amendment bill that there should be no need to take permission of two doctors in the second trimester i.e. period between 12 weeks to 20 weeks, approval from only single doctor would be sufficient. Removal of this provision would lead to the exploitation of this act. After 12 weeks, the foetus state developing physically so it is very necessary to taken approval from two doctors. Making this act so lenient would lead to misuse of this act easily.

Interference of Judiciary

This is the biggest problem in the act that proceedings of judiciary are very slow. In a case of 14 year old from UP who was raped but denied because the court proceeding took entire 8 months in passing the judgement. it let to her period of 'advance pregnancy' which was about 33 weeks. At the end the girl had to marry her rapist out of the ostracization form the family and society.

One more case in which a 10 years old girl from Chandigarh was raped by her uncle and got pregnant when she applied for abortion in the Supreme Court, the court took a lot of time for the judgement and then refused the right to abortion, even though the doctors said that it will be safe to abort the child. She gave birth to a baby last year.

So the court procedure is not apt for this type of cases. Court can grant punishment, if someone violates any provisions or commits anything illegal within the ambit of the case. But court is not meant for granting approval for the same. Many doctors also believe that as this is

fully medical concept and personal issue, so termination should solely be the concerned by doctors and by the law.

Unsafe Abortions

It has been seen that only 55% of abortions are safe. So there are 45% of abortions which are not safe. There may be many reasons for this issue. Not qualified registered medical practitioners could be one issue. Illegal means to abort a baby could be the way.

Over-priced Medicines

Due to high prices of medicines in a practical sense, women in many cases, would opt for medicines which are not recommended by doctors. Surgery fees are also very high which let the women to think twice before doing this legally. They would then prepare illegal means for abortion. Which is also one reason of unsafe abortions? The main aim of this act is to ensure birth control, gives wide-ranging powers to doctors, which is routinely misused by doctors to fill in their pockets.

Sex-determination

One of the main reasons of abortion is sex-selection activities. Though PCPNDT act was enacted to prevent this issue but the implication of both the acts is not much to deal with this issue. Because of the technical advancement this problem is increasing day by day. One of the reason is that our laws are not that strict which could lead the change.

Suggestions

1. It is necessary to empower women with sexual rights, and legal protection against sex crimes.
2. The abortion period should be increased from 20 weeks to 24 weeks of pregnancy.
3. Fast track courts should be established to grant approval of abortion.
4. The register hospitals for abortions should be increased.
5. The registered medical practitioners should be given proper training from time to time with changing laws.
6. The act should be lenient in the cases of emergency.
7. Media can play an active role for spreading awareness.
8. Awareness programmes should be conducted for pregnant women for having healthy food and taking prescribe test.
9. Government should understand their role when it comes to framing the policies for this concept.

Conclusion

Abortion generally talks about ending of a pregnancy before birth which in the death of an embryo or a foetus. It's been 50 years that the India has legalize this concept, but people are not aware about the fact that they possess abortion rights. It has come to the question many a time that whether right to choose abortion should be given to women? It will be an open end question because the Indian law does not give this right to the women. The act of medical termination of pregnancy will be having various pros and cons so it will be the joint responsibility of the government, judiciary and medical science along with proper use of media to make people aware about their right with proper information. The rights of women are very important as it is their right to make abortion but here we also want to see the rights of an unborn child.