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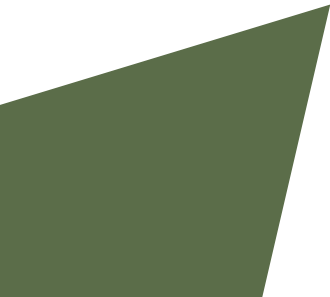
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**Critical Analysis of Medical Termination of Pregnancy Act, 1971 &
(Amendment) Bill, 2020**

Rashi Choudhary

ABSTRACT

The medical termination of pregnancy act, 1971¹ embodies various provisions relating to termination of pregnancy up to 20 weeks, termination of such pregnancies by registered medical practitioners only as defined under the Indian Medical Council Act of 1956, and other circumstances where it is crucial for the well-being of the women to terminate such pregnancy. This act also aims to safeguard and protect the interests of women who suffer from unwanted pregnancies or any other medical condition rendering the women or the foetus to any future risks involving physical disablement, life risk, mental suffering or any other risk which might pertain due to any health condition of the women. Also, women experience a lot of socio-cultural plight in this regard with domestic pressure as well. The overall reproductive health of the women needs to be protected, and thus, it is important to analyse how far has this legislation served its purpose rightfully. Thus, this article seeks to analyse, comprehend and arrive at possible conclusions to critically examine the MTP Act, 1971 and the proposed amendment to this act in the form of MTP(Amendment) Bill, 2020.

¹ <http://tcw.nic.in/Acts/MTP-Act-1971.pdf>

RESEARCH METHODOLOGY

The methodology followed in the quest of the above queries and for arriving at a conclusive suggestion for this article will be doctrinal research.

INTRODUCTION

To understand legal aspects of termination of pregnancy or legally aborting a child we need to make a reference to various legislations including:

- i. Medical termination of pregnancy act, 1971
- ii. Indian penal code (Section 312-316)
- iii. The Constitution of India.

If we try to analyse the provisions of Section 3 of the MTP Act, 1971 we can say that the act authorises a registered medical practitioner to terminate the pregnancies under the provisions of the act. Also, nothing done by him will constitute an offence under IPC under section 312-316 dealing with offences and subsequent punishment of crimes relating to-causing miscarriage, causing miscarriage without the consent of the women, any act done to prevent the child from being born, causing the death of the unborn, and various other offences of same nature.

It also mentions various conditions under which pregnancy can be terminated legally:

- Where the length of pregnancy does not exceed 12 weeks or
- Where the length of pregnancy exceeds 12 weeks but not more than 20 weeks and if not less than two medical practitioners are of the opinion formed in good faith that:
 - continuing the pregnancy would involve a greater risk on the life of the women bearing the child of any kind including physical injury or mental health or
 - if the child is born, it would suffer such mental or physical disability as, been seriously handicapped, thus avoiding such substantial risks.

While examining the condition of the pregnant woman on the above grounds for the termination of pregnancy, the medical practitioners are also required to analyse the pregnant women's foreseeable environment.

Also, section 3 aims to safeguard the physical and mental health of a woman who has been raped and thus resulted in pregnancy. It shall be presumed that such an incident has caused grave physical as well as mental injury to the victim, and thus termination of pregnancy is justified.

Another aspect of this provision talks about the unwanted pregnancies that a woman might want

to get rid of as a result of the failure of any contraceptive measure taken by such a married woman and her husband. In this case, also, it may be presumed that this life-altering decision might hamper the physical and mental health of a woman for which she or the couple is not ready.

This section also embodies the provision for the termination of pregnancy of a minor girl who has not attained the age of 18 years or/and is of unsound mind rendering her incapable of decision-making, in such cases, the pregnancy can only be terminated with the express consent of her guardian in writing. However, no pregnancy can be terminated without the consent of the pregnant woman.

Apart from these crucial provisions, MTP Act, 1971 also contains provisions relating to place of termination of pregnancy- i.e. any hospital maintained by the government or a place approved for the same by the government. This act also talks about the power of the central and state government to make rules and regulations regarding any matter as they shall deem fit and provides for penal measures if any person contravenes with the provision of this act.

All these provisions as discussed in reference to MTP Act, 1971 are not violative of any provision as provided under IPC from section 312 to 316 provided they are done in good faith, and compliance with various provisions of this act. Thus, no penal action is attracted to the medical practitioners or any other person who functions within the ambit of the MTP Act, 1971.

Here, it is also important to make a reference to the constitution of India as well and draw a parallel to article 21 which is indeed umbrella legislation and thus implicitly grants 'right to reproduce' or 'reproductive rights' which includes right to terminate the pregnancy, right to plan family, use contraceptives to avoid unwanted pregnancies, and also to gain sex/health education in schools or through reproductive health services available. Another source from where we can draw an inference of the fact that India implicitly grants 'reproductive rights' is that, India is a signatory to the 'United Nations Conference on Population and Development'², 1994.

WHO also defines the reproductive rights³ as follows- "Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children, and to have information to do so, and right to attain the highest

² United Nations International Conference on Population and Development (ICPD), 5-13 September 1994 Cairo, Egypt. Available at <http://www.iisd.ca/cairo.html>. Accessed on 30-08-2009.

³ Gender and Reproductive rights home page. Available at: <http://who.int/reproductive-health/gender/index.html>. Accessed on 26-08-2009

standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence."

LOOPHOLES IN THE MTP ACT, 1971

After going through the provisions of the MTP Act, 1971, we can trace the following defects in the legislation:

- The act uses the term 'married women and her spouse' and 'rape victims' this renders a great deal of uncertainty for divorcee, unmarried, or a widow who might get pregnant and thus the act is silent on this behalf rendering them vulnerable to unwanted pregnancies, or socio-cultural pressure. Thus, they might have to opt for illegal methods to abort the child and even if they are married women proving that the pregnancy was caused due to the failure of any contraceptive method, they used is a clear violation of 'right to privacy'.
- Also, the length of pregnancy which could be terminated is a maximum of 20 weeks with the consent of the medical practitioners; however, the problem here is that there are some diseases or health defects visible in a foetus only after the expiration of twenty weeks. There is an 'anomaly scan'⁴ which helps to determine the same. In this case, also, termination of pregnancy beyond the said period would be illegal as per the MTP Act, 1971.
- Another problematic area is the penalty imposed by the way of fine on any person who contravenes with the provision of this act. It is a meagre amount of as low as rupees 1000 only.

MTP (AMENDMENT) BILL, 2020

To tackle the problems discussed above in the MTP Act, 1971, an amendment bill was proposed in Lok Sabha by Minister of Health and Family Welfare Dr. Harsh Vardhan on 2nd March 2020. The amendment bill proposes to tackle the aforementioned loopholes in the legislation as well as introduce some additional laws to make the implementation of it act better with the changing scenario.

⁴ <https://www.motherhoodindia.com/specialities-pregnancy-care/pregnancy-scans/anomaly-scan-detail/>

The 1st amendment the bill proposes is concerning the 'period of termination of pregnancy'. The act lays down that pregnancy of up to 12 weeks can be terminated by a registered medical practitioner if there exists a sufficient reason or justification for the same as provided under this legislation and also that if the length of pregnancy is of up to between 12-20 weeks, it could be terminated with the consent two medical practitioners if sufficient cause for doing the same exists but not beyond that. The bill proposes to amend this provision and instead states that where the pregnancy is up to 20 weeks, it could be terminated by the registered medical practitioner if he/she deems fit and it is in compliance with the act.

Also, a pregnancy of up to 20-24 weeks could be terminated only by the approval of two medical practitioners and that this provision would be applicable to certain categories of women only as notified by the central government. The Central Government shall also notify the norms for the medical practitioner with this regard.

Further, the act mentions about the termination of pregnancy caused due to failure of any contraceptive method to avoid unwanted pregnancies by the 'married woman and her husband/spouse'. The bill seeks to replace this terminology by 'women and her partner'. This intended change in the proposed bill is to increase the ambit of this act and cover- unmarried, divorcee or any other woman who might have been neglected earlier.

Also, if the foetus is diagnosed with any 'substantial abnormalities', the upper limit for the termination of pregnancy would not apply. For this, a Medical Board will be constituted to look into the matter. This Medical Board will be constituted by the state government, and the board will comprise of : (i) a gynaecologist, (ii) a paediatrician, (iii) a radiologist or sonologist, and (iv) any other number of members, as may be notified by the state government. The functions of this board will be determined by the central government.

Lastly, the proposed bill also aims to protect the privacy of the woman and thus states that no medical practitioner will be allowed to reveal the name or any information with regard to the termination of pregnancy of the woman to any person other than if authorised by law. Anyone who is found in contravention of this provision would be punished with a fine or imprisonment for up to one year or both.

ANALYSIS OF THE MTP(AMENDMENT) BILL, 2020

The MTP(Amendment Bill), 2020 came approximately after passing a long period of 50 years, this fact itself tells us a lot about our legal system, the socio-cultural stigma attached to women in our society to discuss issues like these which require a great deal of attention, working towards the establishment of an egalitarian society as claimed by the law providers, and also to do away with all forms of discrimination.

Despite all the rules, laws, conventions, penal provisions for offences against women, the ground reality remains the same. Today, also women face a lot of pressure socially, culturally, and not to mention the patriarchal society that we all lived in and continue to live in today though the situation has changed for good, but to what extent is still questionable? The decision relating to abortion or termination of pregnancy which should ideally be taken by the woman herself or the couple together undergoes a lot of scrutiny from the family members, their pressure, or sometimes pressure from the spouse himself either to abort the child, given the obvious reasons of gender-discrimination, financial stability, etc., or in the case of unwanted pregnancy due to failure of any contraceptive methods, there might be circumstances where she is forced to keep the child against her wishes.

The fact that it took approximately 50 years to recognise the 'reproductive rights' of a woman tells us a lot. The proposed change in the amendment bill from 'married woman and her spouse' to 'women and her partner' though is a great effort to include the unmarried, divorcee, widow under this legislation, however, we cannot ignore the fact that it took all these years to enact the same and thus has already caused substantial damage to our society. Illegal abortions are common among these women who were not under the preview of this act. Also, the constant judgement from society renders them helpless to approach a doctor and discuss their problems which might they be facing because of the constant threat of being 'told-upon'; thus they normally opt for illegal methods for abortion or take pills instead which is harmful to their physical as well as mental health.

Another issue which is dealt with leniently is with regard to 'right to privacy'. The bill sorts to punish those medical practitioners who disclose any personal information regarding the termination of pregnancy to any other person who is not authorised/entitled to such personal and sensitive information is punishable with imprisonment for up to one year and with fine or both. This is a very meagre punishment as this information could be a life-altering piece of information

for the woman alone or her spouse together. The penal provision for this should have been more stringent so as to rightfully set an example for the others and thus save the 'right of privacy'.

Another issue is concerning the religion; for instance, in Islam or Christianity, abortion is condemned and frowned upon. Thus, there is a constant tussle between Religious beliefs and the decision regarding the termination of pregnancy.

It is also quite clear that this process of termination of pregnancy causes a great deal of agony among women and is a traumatic experience altogether. Mostly the reason cited in the case of unwanted pregnancies is that of 'harm to mental health'. Thus, we can say that there is a lot of distorted understanding of the same. We find no mention in the bill about the understanding of the 'mental health' and neither find any particular practice on behalf of medical practitioners on this behalf though it is their solemn duty to examine their patients.

Considering the increase in cases of medical negligence, though the MTP Act, 1971 provides for the protection of medical practitioners from any action done in good faith as mentioned under section 8 of the said act, however the need to analyse 'good faith' in accordance to the facts and circumstances of the case is a difficult task as we all can trace malpractices in this behalf, for example, there might be cases where the doctors are bribed to abort the child by the spouse or any relative. The situation can also be understood alternatively, where the medical practitioner is wrongly accused of abortion to get away from the clutches of law resulting in the total vandalism of the career of the medical practitioner. Thus, the law regulating the conduct of medical practitioners as well as the patients in this behalf should have found a place in this bill which is missing.

CONCLUSION AND SUGGESTIONS

The MTP(Amendment Bill), 2020 is indeed a great effort to do away with all the loopholes as discussed above. It has indeed proposed some necessary changes in the legislation which should have been proposed much earlier. Also, the bill has expanded the scope of its applicability and thus gained more practicality. However, there can be some additional suggestions to the bill which might prove to be useful:

- The provisions of MTP(Amendment Bill), 2020 should have also contained provisions regarding 'medical emergency' of any sort which a woman might encounter. The legislation should serve its purpose rightfully to help the women in need and should not be too stringent in this regard.
- Every woman should have full access to 'reproductive rights' so as to make smart choices in the future and also to save the physical, mental agony which she might have to pass through during the course of pregnancy.
- Media and other welfare organisations should play a crucial role in spreading out all the awareness required in this field, especially in the rural areas, as we all are well aware of the fact that women in those areas have to go through frequent pregnancies which is harmful to their health as well as for the child born.

Thus, no legislation is without loopholes, and change is fundamental for human existence as well as for the laws which apply to them. Thus, there should be constant efforts to improve the legislation in accordance with the changing needs and socio-cultural scenario to make it more acceptable, pragmatic so that it is able to fulfil the purposes for which it was enacted.