

Medical Termination of Pregnancy Act: A Boon or a Bane for a Woman in India - A Critical Analysis

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Abstract: *In India, Pregnancy can be terminated till 20 weeks under Medical Termination of Pregnancy Act, 1971. After that, either one has to go for illegal abortion or forcefully have to bear the child. Niketa Mehta case is one of the best example to cite and discuss about the plight of the women in India where women has the right of abortion but with a limitation and this limitation has caused not only serious social, legal but as well as reproductive health issue in women especially about their right for safe abortion. In most of the cases of pregnancy it is found that any abnormality relating to foetus is visible after 18 weeks. And there is some test like Triple Marker Test which is conducted during 15 to 20 weeks of pregnancy to find any genetic abnormality of foetus and not before that and moreover it is only after 20 weeks of pregnancy when abnormality is visible. Many times medically it is not possible to treat the foetus, and then in that case abortion is the way to terminate the pregnancy not only for the benefit of the foetus but for the family and society. And in such case if the mother is forced to carry the foetus then she will be not only affected psychologically and but also likely to face severe health complication due to this in future. My paper will focus on the reproductive health issue of the woman where abortion is required as a protective measure for her health and for the wellbeing of her and her family.*

Keywords: Pregnancy, Abortion, Genetic disorder, Triple Marker Test, Amniocentesis, Illegal Abortion

1. Research Methodology

For this research I have used both Doctrinal and Non-doctrinal methods. For doctrinal research, I have studied various articles, case laws, Journals, books etc. For Non-doctrinal I have used interview method for collecting data relating to this topic.

2. Acknowledgement

I am thankful to Dr. Nehha V Motghare, MBBS, DGO, (CGMC 96/2003), Gynaecologist, Ayusman Clinic, Raipur, Chhattisgarh, for giving her valuable time and also for sharing valuable information relating to this research.

3. Introduction

According to Oxford Dictionaries abortion means “The deliberate termination of a human pregnancy, most often performed during the first 28 weeks” [1]

According to Cambridge Dictionaries abortion means “the intentional ending of a pregnancy” [2]

According to Your Dictionary abortion means “The definition of abortion is when a pregnancy ends abruptly, either voluntarily or involuntarily, and the fetus is expelled from the womb before it can live on its own”. [3]

Thus, from the above definition we find that abortion means termination of early pregnancy mostly three months from the date of conceived, because during this time period the fetus if born can't be survive.

Abortion is mainly divided into two types-

- 1) **Spontaneous Abortion** [4] – Is a kind of abortion which occurs during pregnancy due to any complication and it is also known as miscarriages.
- 2) **Induced abortion**[5] has also been divided into two types:
 - a) Therapeutic abortion – From its name it is clear that when abortion is done for the protection of the mother life or when child is suffering from some severe health problem like **Hydrocephalus**(brain not developed) it is known as Therapeutic abortion.
 - b) Elective abortion – An abortion induced for any other reason is known as elective abortion.

Earlier abortion was not allowed, whether voluntary or involuntary. It was only after the case of **Roe V. Wade 410US 113(1973)** [6] that abortion was made legal and also considered as one of the essential right under fundamental right and it is included as a part of the Right to Privacy.

Before Medical Termination of Pregnancy Act, 1971, the law relating to Abortion was dealt under section 312 to 316 of Indian Penal Code, where abortion done with or without consent of the women was punishable offence except, if it is done for the protection of mother life and in no other circumstances abortion was allowed.

According to section 312 of Indian Penal Code , Abortion means, 'Whoever voluntarily causes a woman with child to miscarry shall, if miscarriage be not carried in good faith for the purposes of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both, and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine" [7]

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Thus, under Indian Penal Code, no women can claim abortion as a matter of Right. Only therapeutic abortion was allowed. And because of which mortality rate of the mother has increased during that time due to illegal and unsafe abortion. So, to control the illegal abortion new law relating to abortion was introduced i.e. Medical Termination of Pregnancy Act, 1971. Section 3 of the Medical Termination of Pregnancy Act, laid down the grounds where abortion can be performed.

4. Objectives Of Medical Termination Of Pregnancy Act, 1971

The preamble of the Medical Termination of Pregnancy Act, 1971 read as follows-

“An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto” [8]

Preamble clearly indicates the objective of the MTP act. That only certain pregnancy [9] will be allowed to terminate under MTP Act by the registered medical practitioners.

Also the main objective of the act is to improve the maternal health of Indian women and to control the mortality rate of the women due to unsafe and illegal abortion. It was only after this act, safe abortion was available to women but that too under certain condition which I will discuss below.

5. Condition For Termination of Pregnancy

Following are the conditions where a woman can terminate her pregnancy under section 3 of the said Act-

- When there is a risk to the life of the pregnant woman or of grave injury physical or mental health in case of continuation of pregnancy.
- When there is substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.
- When pregnancy is alleged by the pregnant woman to have been caused by rape.
- When any pregnancy 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,
- When the length of the pregnancy does not exceed twelve weeks.
- When the length of the pregnancy exceeds twelve weeks but does not exceed twenty week.

So, these are the conditions where one can avail the facility of legal termination of pregnancy. Now question is that whether really this act helps the women to avail safe termination of pregnancy or abortion as a right?

Then the answer is No. Like in USA where women can avail the facility of abortion as a matter of Reproductive Right included in the fundamental right i.e. under Right to Privacy , but in India not all women is allowed to opt Abortion service

under MTP Act. Under Medical Termination of pregnancy Act, only married women and rape victim were allowed to do abortion and no other woman had the right to abort like unmarried, widow, and divorcee. So for them either they were forced to continue their pregnancy or they have to go for illegal abortion which in any case harmful to the woman. Even for married women they have to prove that pregnancy was due to failure of contraceptive measure, which is again violation to Right to privacy.

Also, under **Section 3.2.b** [10] , pregnancy can be terminated up to 20th week and not more than that. Also, under **Section 3.2.ii** [11], when 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.

But, there is certain medical test which is conducted during 20th week of pregnancy for the detection of any fetus abnormality. Now the question is, if this test is to be conducted during 20th weeks of pregnancy then, what is validity of section 3.2.b and 3.2.i?

As, termination of pregnancy is allowed, up to 20 weeks of gestation and not after that. In some of the cases any health related issues of the baby is confirmed after 20 weeks. So, in that cases mother is forced to carry the pregnancy as it is illegal to abort after 20 weeks. This is not only injustice to woman but to the child also.

6. Test Conducted During Pregnancy

Following are the test which is conducted during the pregnancy for finding any abnormalities in fetus as told by Dr. Nehha V Motghare during her interview with me ----

- Double Marker Test- 10-13 weeks
- Triple Marker Test- 18-20 weeks
- Anomaly Scan- 20 weeks

Most of this test is conducted during 20th weeks of pregnancy for proper diagnosis and result. And after the diagnosis some time treatment is also given to cure the abnormalities in unborn fetus. But not in all cases the result is positive. So, in such cases the woman is forced to carry pregnancy unwillingly and forcefully. There, is no means to keep Section 3.2.(ii) in MTP Act as in reality or practically it is not applicable in actual life when it is needed as in the case of **Dr. Nikhil D. Datar v. Union of India & Ors** [12].

Common Health Problem of Fetus - (As stated by Dr. Nehha V Motghare)

- **Hydrocephalus:** - This is a case where the brain of the fetus is not fully developed.
- **Congenital Anomalies:** - e.g. Down syndrome, Heart Problem etc.

Both, in the above cases either the child will die immediately after birth or IUD (Intra uterine death) i.e. death inside the womb which is sometime becomes danger for the mother life,

if not detected in proper time and in some cases the child born will remain alive for some months or year but with severe health problem.

According to her [13] reason for such health problem to unborn fetus are follows---

- Low intake of Folic acid
- Thyroid problem of mother
- Diabetic mother
- Higher Age of mother etc
- Alcoholic nature of mother

Now the question is, whether woman doesn't have the ACTUAL RIGHT for safe abortion? As in FACTUAL EVIDENCE it is mentioned in the provision that, if there is a risk to the life of the pregnant woman or of grave injury physical or mental health in case of continuation of pregnancy and also when there is a substantial risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped in that case pregnancy can be terminated. But **Dr. Nikhil D. Datar** [14] Case proved it to be false.

7. Risk on Reproductive Health of Women

A woman must have the right not only for safe abortion but she must have the right to deliver a healthy baby. As a child with severe medical complication not only become burden for the parents but they were neglected from their family members, society, schools etc. And in every case the mother of the baby suffered most which result in severe mental stress and other health problem. Even, reproductive health of women should include both pre and post pregnancy term. A woman must have the right not only for safe abortion but she must have the right to deliver a healthy baby. As a child, with severe medical complication not only become burden for the parents but they were neglected from their family members, society, schools etc. And in every case the mother of the baby suffered most which result in severe mental stress and other health problem. Thus, Reproductive health of women should include both pre and post pregnancy term.

8. Case Study

During my interview with Dr. Neha, she discussed one patient case history with me. Mrs. Narmata (name changed on the request of Dr. Neha), 28th weeks pregnant lady and her husband visited their friend's house and came to know about the anomaly scan which is to be conducted during 20th weeks of pregnancy. But in her case, her doctor did not asked her to do this test. So, after knowing about this test they approached Dr. Neha. Even though, for anomaly scan it was too late to perform as she was in the eighth month of pregnancy. But for her satisfaction, Dr. Neha prescribed the test and the report shocked every one including the Dr. Neha, as the fetus brain was not fully developed at that time. So, at this point of time the couple had to wait for the natural delivery as abortion was not possible at this point of time and also to suffer the mental

agony. But at the end of eight months Mrs. Narmata delivered a death baby.

In this case, if the previous doctor of Mrs. Narmata would have performed the test in right time then she would not have to suffer this much or by providing treatment at the right time, the fetus would have been cured and survived.

9. Reproductive Rights

"Reproductive rights are the rights of individuals to decide whether to reproduce and have reproductive health. This may include an individual's right to plan a family, terminate a pregnancy, use contraceptives, learn about sex education in public schools, and gain access to reproductive health service" [15].

Even Universal Declaration of Human Rights 1948 considered Reproductive Rights as one of the basic Human Rights.

Even according to Para 7.3 of the International Conference on Population and Development (ICPD) 1994 [16], "Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These 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 the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents" [17]

Likewise Beijing Declaration, Fourth World Conference on Women "The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment" [18]

In many International Conventions [19], Reproductive rights is considered to be as one of the basic human right which is included under Right to Privacy of Fundamental Rights. Where a women has a Right for safe Abortion under Reproductive health not only abortion rights but right to decide number of child, spacing between the child etc is also included in Reproductive Rights. Also in country like UK and Singapore abortion is allowed up to 24 weeks [20]. But in India, abortion is allowed up to 20th weeks. It was after the Menaka Gandhi case when Article 21 was elaborately discussed. And also, Right to Abortion was considered as a part of Right to Privacy and included under Article 21 of the Constitution of India. But biasness is there. As only rape victim and married lady were allowed to have safe abortion under MTP Act. The Act is silent about the right of the Unmarried lady, divorcee and Widow. Even married lady had to show or proved that there was a failure of contraceptive and because of which she get pregnant. Then, in such situation where is the privacy of Indian Women, when she has to

answer so many questions before availing the service of safe legal abortion under MTP Act, 1971. Moreover, Indian women are not that lucky like women in European countries who enjoyed their Reproductive rights with full freedom. Or we can say that Indian society and Government does not want to give this right to the women of our country as still our country is patriarchal society or male dominating society, where every decision is to be taken by the male member of the society.

"No woman can call herself free who does not own and control her body. No woman can call herself free until she can choose consciously whether she will or will not be a mother."[21] ----- Margaret Sanger

10. Suggestion

- Abortion of pregnancy should be allowed in any stage, when fetus is suffering from any severe health issue.
- MTP should be lenient in cases of such medical emergency.
- Awareness program is necessary to educate women for having healthy foods.
- Pregnant women with history of diabetics or thyroid should conduct the entire prescribed test on time.
- Abortion rights should be given to all women as in European countries.
- Media can play a vital role for spreading awareness in public relating to those tests which one should must do for the detection of abnormality in fetus.
- Abortion should be allowed up to 24th weeks.
- Every woman should have the right of abortion.
- Law relating to abortion in India should be liberalize.

11. Conclusion

Abortion rights should be given to every woman. As reproductive rights are also one of the essential rights of Human, and it is already recognised in many International Conventions. So, Some where the MTP laws of India is discriminating the rights of the women. As under these laws only a) married women in case of any failure of the contraceptive methods can go for abortion and b) rape victim. But no other women except this can go for abortion. Either they have to go illegal abortion or they will be forced to carry the pregnant which is neither good for the women or for the baby. So, women's interest must be protected.

From the above discussion it is found that MTP Act in some cases proved be BOON for the women of India and in some cases BANE.

"Every woman has the right to enjoy their Reproductive rights, as its woman who has to carry her pregnancy not the government"

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- [9] See Id. Section 3 of MTP Act- When Pregnancies may be terminated by registered medical practitioners.- Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act. Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,-
 - (a) where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or
 - (b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are. Of opinion, formed in good faith, that,-
 - The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury 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.

Explanation 1.-Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.-Where any pregnancy 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 may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian. (b) Save as otherwise provided in C1. (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

- [10] Id. Section 3.2.(b)-where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of opinion, formed in good faith.
- [11] Id. Section 3.2. (ii) 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.
- [12] SLP (C) 5334 of 2009, Fact- In her 20th week of pregnancy, Niketa Mehta's sonography showed her fetus to be normal. However, in the 22nd week, the gynaecologist found that the fetus had a congenital complete heart block which would lead to a poor quality of life and could be fatal. Because the condition of Mrs. Mehta's fetus was not discovered until the 22nd week of her pregnancy, she sought permission to terminate the pregnancy from the Bombay High Court. The Court refused to allow an abortion and Mrs. Mehta was forced to continue with her pregnancy. She ultimately had a miscarriage after months of grief and agony and at risk to her own personal health and safety.
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