

## Medical Termination of Pregnancy in India: Some Issues

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### **Abstract:**

Birth of a child is considered as a gift of God by Indians. A family is considered incomplete without a child. There may be circumstances, where the pregnancy is unwanted. In case of a family already having two or more children, pregnancy of rape victim or pregnancy of unmarried woman may be such of the circumstances, where the woman or her concerned may prefer to terminate the pregnancy. But it is also a fact in India that sometimes pregnancy is terminated only for want of a male child, which affects the ratio of

### 1.1 Introduction:

“A new baby is like the beginning of all things - wonder, hope, a dream of possibilities.”

Eda J Leshan<sup>1</sup>

A family in India becomes enrich with the birth of a child. Birth of a child is celebrated

male and female children. The Government is taking steps to improve the male-female child ratio. The Medical Termination of Pregnancy Act, 1971 was passed and implemented in order to improve the child sex ratio by regulating abortions. The Act authorizes the medical termination of certain pregnancies by registered medical practitioners which gives rise to many controversial issues.

Keywords: Medical Termination, Medical Practitioner, Sex-Ratio, Unintended-Pregnancy

not only in the family and but also with the society. A child is considered as a gift of God in Indian culture. A family completes with a child. But sometimes birth of a child is not presumed to bring happiness. Pregnancy may be unwanted in certain situations. In such situations, it is

preferred to terminate it. Such situations may cover a case of a family already having two or more children, pregnancy of rape victim, pregnancy of unmarried woman etc. Couples already having two or more children, might desire to terminate the pregnancy due to many reasons. Parents wish to provide every facility to their children. Economic conditions of a family and desire to provide facilities to their children may generally compel a family in India not to plan more than two children. Sometimes, due to failure in family planning or failure of contraceptive or not using any contraceptive, a woman may have unintended pregnancy to which she may desire to terminate medically. Similarly, pregnancy may have occurred due to rape or sexual assault, in which case the woman may intend to abort it medically. Similar may be the case of unwed pregnant woman. The Supreme Court held that it is a woman's right to give birth or undergo an abortion.<sup>2</sup>

For medical termination of pregnancy, the law enacted by the legislature of India is strict. Because sometimes, a female fetus is aborted only for want of son. People in India are more inclined to the desire of a son. They are increasingly aborting their second child if they know it to be a girl and they already have a

daughter.<sup>3</sup> It affects the sex ratio at birth. As per the Census 2011, the child sex ratio (0-6 years) has shown a decline from 927 females per thousand males in 2001 to 919 females per thousand males in 2011.<sup>4</sup> The government is determined to improve sex-ratio and doing its best efforts. The Government of India has introduced Beti Bachao, Beti Padhao (BBBP) programme<sup>5</sup> to address the issue of decline in CSR.<sup>6</sup> The Medical Termination of Pregnancy Act, 1971 was enacted with a view to give limited exemption to medical termination of pregnancy or abortion.<sup>7</sup> Abortion in India is legal only up to twenty weeks of pregnancy under specific conditions and situations, which are broadly defined as:

- a) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury of physical or mental health, or
- b) 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.<sup>8</sup>

The Act is applicable to whole of India except the state of Jammu and Kashmir. The Act

allows medical termination of certain pregnancies by registered medical practitioners. The main purpose of the paper is to analyze the Act to find out the lacunas and to provide the suggestions. The doctrinal method is used to complete this paper.

### **1.2 Who can Terminate Pregnancy Medically?**

According to Medical Termination of Pregnancy Act, 1971 a registered medical practitioner<sup>9</sup> can terminate the pregnancy. He should have experience or training in gynaecology and obstetrics for terminating the pregnancy.<sup>10</sup> But in order to save the life of pregnant woman, this condition of experience and training can be overlooked, but the opinion regarding the risk to life of pregnant woman must be made in good faith.<sup>11</sup>

### **Experience and Training required for the Termination of Pregnancy:**

A registered medical practitioner shall have one or more of the following experience or training in gynaecology and obstetrics, namely;<sup>12</sup>

- (a) In case the medical practitioner is registered in a State Medical Register immediately before the commencement of the Medical Termination of Pregnancy Act 1971, the experience of 3

years in practice of gynaecology and obstetrics is required.

- (b) In case the medical practitioner is registered in a State Medical Register after the commencement of the Medical Termination of Pregnancy Act 1971, the experience and training is required as per sub-rule (i) & (ii):-

(i) If he has completed six months of house surgency in gynaecology and obstetrics; or

(ii) If he had experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology; or

- (c) If he has assisted a registered medical practitioner in the performance of twenty-five cases of medical termination of pregnancy 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.

(i) This training would enable the Registered Medical Practitioner (RMP) to do only 1st Trimester terminations (up to 12 weeks of gestation).

(ii) For terminations up to twenty weeks the experience or training as prescribed under sub rules (a), (b) and (d) shall apply.

(d) In case of a medical practitioner who has been registered in a State Medical Register and who holds a post-graduate degree or diploma in gynaecology and obstetrics, the experience or training gained during the course of such degree or diploma.

If a registered medical practitioner terminates any pregnancy in accordance with the provisions of Medical Termination of Pregnancy Act, 1971, he shall not be guilty of any offence under Indian Penal Code or under any other law for the time being in force.<sup>13</sup> But, if pregnancy is terminated by a person who is not registered medical practitioner that shall be an offence punishable under Indian Penal Code.<sup>14</sup>

### **1.3 Rules for Medical Termination of Pregnancy:**

Based upon the length of pregnancy, registered medical practitioners are allowed to terminate pregnancy at two levels:

1. If pregnancy does not exceed twelve weeks<sup>15</sup> or;

2. If pregnancy exceeds twelve weeks but does not exceed weeks<sup>16</sup>.

#### **1.3.1 Medical Practitioner's Opinion for Pregnancy Termination:**

For termination of pregnancy the Medical Practitioners have to make opinion in good faith that:

- i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health;<sup>17</sup> or
- ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.<sup>18</sup>

Grave injury to the mental health of pregnant women includes anguish caused by pregnancy by rape.<sup>19</sup> Similarly grave injury to the mental health of pregnant married women includes anguish caused by such unwanted pregnancy by failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children.<sup>20</sup> In determining the involved risk of injury to the physical or mental health of pregnant woman, consideration may be taken of her actual or

reasonable foreseeable environment.<sup>21</sup> In case, a woman who has not attained the age of 18 years or who has attained the age of 18 years but is a lunatic, the written consent from the guardian of such woman is to be taken.<sup>22</sup> And in other cases, the consent of the pregnant women is required.<sup>23</sup> The consent has to be given by the woman or the guardian in Form C.<sup>24</sup> Guardian means a person having the care of the person of a minor or lunatic.<sup>25</sup>

In case of pregnancy not exceeding twelve weeks, the opinion of single registered medical practitioner in good faith is required about the risk to the health of pregnant woman or the substantial risk to the child to be born out. Similarly in case of pregnancy exceeding twelve weeks but not exceeding twenty weeks, the opinion of minimum two registered medical practitioners in good faith is required about the risk to the health of pregnant woman or the substantial risk to the child to be born out.<sup>26</sup>

### **1.3.2 Place of Medical Termination of Pregnancy under MTP, Act:**

The medical termination of pregnancy can be performed at:

a) A hospital established or maintained by Government;<sup>27</sup> or

b) A place which is approved by the Government.<sup>28</sup>

### **1.3.3 The conditions required for getting the Government's Approval:**

The following conditions are required to be fulfilled for getting approval of the government to a place used for termination of pregnancies:

- (1) The Government can approve a place for the termination of pregnancy, if government is satisfied that;<sup>29</sup>
  - i) the termination of pregnancies may be done therein under safe and hygienic conditions; and
  - ii) the following facilities are provided at the place of termination of pregnancy.

In the case of first trimester or pregnancy not exceeding 12 weeks: A gynecology examination/labour table, resuscitation and sterilization equipment, drugs and parental fluid, back up facilities for treatment of shock and facilities for transportation; and

In case of second trimester or the pregnancy exceeding 12 weeks but not exceeding 20 weeks, the following facilities are

to be provided at the place of termination of pregnancy:

- (a) An operation table and instruments for performing abdominal or gynaecological surgery;
- (b) Anaesthetic equipment, resuscitation equipment and sterilization equipment;
- (c) Drugs and parental fluids for emergency use, notified by Government of India from time to time.

In the case of termination of early pregnancy up to 7 weeks using RU-486 with Misoprostol, the same may be prescribed by a Registered Medical Practitioner at his clinic, provided such a Registered Medical Practitioner has access to a place approved under the MTP Act, 1971. For the purpose of access, the RMP should display a Certificate to this effect from the owner of the approved place.<sup>30</sup>

- (2) Every application for the approval of a place shall be in a Form A and shall be addressed to the Chief Medical Officer of the District<sup>31</sup>.
- (3) On receipt of an application, the Chief Medical Officer of the District may verify any information contained in such

application or inspect any such place with a view to satisfying himself that the facilities required for termination of pregnancy under the Act are provided and that termination of pregnancies may be made under safe and hygienic conditions.

- (4) Every owner of the place which is inspected by the Chief Medical Officer of the District shall afford all reasonable facilities for the inspection of the place.
- (5) The Chief Medical Officer of the District may, if he is satisfied after such verification, enquiry or inspection, as may be considered necessary, that termination of pregnancies may be done under safe and hygienic conditions at the place, recommended the approval of such place to the Committee.
- (6) The Committee may after considering the application and the recommendations of the Chief Medical Officer of the District approve such place and issue a certificate of approval in Form B.
- (7) The certificate of approval issued by the Committees shall be conspicuously

displayed at the place to be easily visible to persons visiting the place.

- (8) The place shall be inspected within 2 months of receiving the application and certificate of approval may be issued within the next 2 months or in case any deficiency has been noted, within 2 months of the deficiency having been rectified by the applicant.
- (9) On the commencement of these rules, a place approved in accordance with the Medical Termination of Pregnancy Rules, 1975 shall be deemed to have been approved under these Rules.

#### **1.3.4 Composition and tenure of District level Committee:**

The composition and tenure of District level committee will be as under:<sup>32</sup>

- (1) One member of the district level Committee shall be the Gynaecologist/ Surgeon/Anaesthetist and other members from the local medical profession, non-governmental organization and Panchayati Raj Institution of the District. One of the members of the Committee shall be a woman.

- (2) Tenure of the Committee shall be for two calendar years and the tenure of the non-government members shall not be more than two terms.

#### **1.3.5 Inspection of approved place of Pregnancy Termination:**

Chief Medical Officer of the District may inspect the approved place of pregnancy termination as often as may be necessary with a view to verify whether termination of pregnancies is being done therein under safe and hygienic conditions. The chief medical officer may call for any information or may seize any article, medicine, ampule, admission register or other document, maintained, kept or found at the approved place of pregnancy, if he has reason to believe that there has been death of or injury to a pregnant woman at the place or that termination of pregnancies is not being done at the place under safe and hygienic conditions. In case of any seizure from the place of termination of pregnancy, the provisions of Cr. P.C. would be applied.<sup>33</sup> If, after inspection of any approved place, the Chief Medical Officer of the District is satisfied that the specified facilities are not being properly maintained therein and the termination of pregnancy at such place cannot be made under safe and hygienic conditions, he

shall make a report of the fact to the Committee, giving the detail of the deficiencies or defects found at the place and the committee may, if it is satisfied, suspend or cancel the approval. The committee shall give an opportunity of making representation to the owner of the place before the approval is suspended or cancelled. During the suspension of the approval to the place of termination of pregnancy, the place shall not be deemed to be an approved place during such suspension from the date of communication of the order of the suspension. In case of cancellation of approval to the place of termination of pregnancy, the owner of the place may make such addition or improvements in the place and thereafter, he may make an application to the committee for grant of approval to the place of termination of pregnancy.<sup>34</sup>

#### **1.3.6 Review of order of cancellation or suspension of approval of the place:**

In case of order of cancellation or suspension of approval of the place for pregnancy termination, the owner of the place<sup>35</sup> may make an application for review of the order to the Government within a period of sixty days from the date of such order. The government may condone the delay in case it is satisfied that the applicant was prevented by sufficient cause

to make application within time. The Government may confirm, modify or reverse the order of suspension or cancellation of approval after giving the owner an opportunity of being heard.<sup>36</sup>

#### **1.4 Issues regarding Length of Pregnancy and Place of Termination of Pregnancy:**

Under Medical Termination of Pregnancy Act, termination of pregnancy is permitted in case the length of pregnancy does not exceed twenty weeks. What if the length of pregnancy exceeds twenty weeks? If the length of pregnancy caused by rape exceeds twenty weeks, what will be the position of anguish of the woman victim of rape? Similarly, what will be the position of anguish of the married woman whose length of pregnancy exceeds twenty weeks which is caused by failure of any device or method used for limiting the number of children? Similar may be the case of an unwed pregnant woman, whose pregnancy exceeded 20 weeks due to unexplainable reasons. The Medical Termination of Pregnancy Act empowers a registered medical practitioner to ignore the length of pregnancy and the provisions regarding opinion of two registered medical practitioners and place of termination of pregnancy under the Act do not apply, where he



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is of the opinion which is formed in good faith that termination of such pregnancy is immediately necessary to save the life of the pregnant woman.<sup>37</sup>

There may be cases of unwed women, rape victim, victim of sexual assault and minor where the length of pregnancy might have exceeded 20 weeks due to unawareness, poverty, illiteracy etc. India has a grim record of sexual assaults on minors, with 20,000 cases of rape or sexual assaults reported in 2015.<sup>38</sup> The Supreme Court of India allowed medical termination of pregnancy, when it was of 24 weeks. The apex court in civil writ petition titled Meera Santosh Pal and Ors. Vs Union of India and Ors<sup>39</sup>, held that though, the pregnancy is into the 24th week, having regard to the danger to the life and the certain inability of the fetus to survive extra uterine life, we consider it appropriate to permit the petitioner to terminate the pregnancy. Similarly the Supreme Court of India on February 07, 2017 gave directions to allow the petitioner to undergo medical termination of her 24 week pregnancy, by considering danger to the life of the mother and inevitable death of the fetus outside womb.<sup>40</sup> Supreme Court of India also allowed medical termination of 26 week pregnancy on fatal health conditions<sup>41</sup>. It is

amply clear that the Legislature intended to liberalize the existing provisions relating to termination of pregnancy keeping in view the danger to life or risk to physical or mental health of the woman or risk of survival of the child on humanitarian grounds, such as when pregnancy has arisen from a sex crime like rape or intercourse with a lunatic woman, and eugenic grounds where there is substantial risk that the child, if born, would suffer from deformities and diseases.<sup>42</sup> However, in cases where pregnancy exceeds 20 weeks and there is no danger to the life of pregnant woman or child, yet the pregnant woman does not want to continue full term of pregnancy and give birth to the baby, there are no provisions.

### **1.5 Conclusion and Suggestions:**

No doubt a child is considered as a gift of God but in certain circumstances the medical termination of pregnancy becomes necessary. In case pregnancy exceeds 20 weeks, a woman is not allowed under the Act to terminate pregnancy except with the opinion of two doctors that there is risk to mother's life or grave injury to her physical or mental health or if the baby born, there would be substantial risk of physical or mental abnormalities to the baby or to be born seriously handicapped. If there is no

risk to the life of the pregnant woman or the child and pregnancy exceeds 20 weeks, in such circumstances if pregnant woman wants to medically terminate the pregnancy, she would not be able to do this. To tackle with such circumstances a medical board may be established in each and every district in India. A woman having two or more children should be allowed to medically terminate her pregnancy on the recommendations of the medical board even if her pregnancy exceeds 20 weeks and there is no danger to the life of the pregnant woman. A

provision in this regard may be inserted in the Medical Termination of Pregnancy Act, 1971. Similarly, an unwed woman or a victim of rape or a minor or a victim of sexual harassment, if don't want to continue her full term of pregnancy or don't want to give birth to a baby, may be allowed to medically terminate her pregnancy on the recommendations of the medical board even in case her pregnancy exceeds 20 weeks and there is no danger to the life of the pregnant woman.

## References

<sup>1</sup> <http://www.abundance-and-happiness.com/quotes-for-kids.html> accessed on 16.09.2017

<sup>2</sup> <https://scroll.in/latest/855780/only-woman-has-the-right-to-give-birth-or-terminate-pregnancy-husbands-consent-not-needed-sc> accessed on 13.11.2017

<sup>3</sup> <https://www.theguardian.com/world/2011/may/24/india-families-aborting-girl-babies> accessed on 22.09.2017

<sup>4</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103437> accessed on 11.10.2017

<sup>5</sup> [http://wcd.nic.in/BBBPScheme/About\\_BBBP\\_Scheme.pdf](http://wcd.nic.in/BBBPScheme/About_BBBP_Scheme.pdf) accessed on 22.09.2017

<sup>6</sup> Child Sex Ratio

<sup>7</sup> <https://selfstudyhistory.com/2015/12/18/labour-and-social-welfare-medical-termination-of-pregnancy-act-1971/> accessed on 22.09.2017

<sup>8</sup> [https://en.wikipedia.org/wiki/Abortion\\_in\\_India](https://en.wikipedia.org/wiki/Abortion_in_India) accessed on 21.09.2017

<sup>9</sup> A register medical practitioner means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council, 1956, whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under Medical Termination of Pregnancy Act, 1971.

<sup>10</sup> Section 2 clause (d), MTP Act

<sup>11</sup> Explanation to section 5, MTP Act

<sup>12</sup> Rule 4, the Medical Termination of Pregnancy Rules, 2003

<sup>13</sup> Section 3, MTP, Act

<sup>14</sup> Section 5 clause (2), MTP Act

<sup>15</sup> Section 3 clause 2 (a), MTP Act

<sup>16</sup> Section 3 clause 2 (b), MTP Act

- <sup>17</sup> Section 3 clause 2 (i), MTP Act  
<sup>18</sup> Section 3 clause 2 (ii), MTP Act  
<sup>19</sup> Explanation 1 to clause 3 (2)(b), MTP, Act  
<sup>20</sup> Explanation 2 to clause 3 (2)(b), MTP, Act  
<sup>21</sup> Section 3 clause 3, MTP, Act  
<sup>22</sup> Section 3 (4)(a), MTP Act  
<sup>23</sup> Section 3 (4)(b), MTP Act  
<sup>24</sup> Rule 9, the Medical Termination of Pregnancy Rules, 2003  
<sup>25</sup> Section 2 (a), MTP Act  
<sup>26</sup> Section 3 clause 2, MTP Act  
<sup>27</sup> Section 4 (a), MTP, 1971  
<sup>28</sup> Section 4 (b), MTP, 1971  
<sup>29</sup> Rule 5, the Medical Termination of Pregnancy Rules, 2003  
<sup>30</sup> Explanation to Rule 5 sub-rule 1, the Medical Termination of Pregnancy Rules, 2003  
<sup>31</sup> As per rule 2 (b), the Medical Termination of Pregnancy Rules, Chief Medical Officer of the District means the Chief Medical Officer of a District, by whatever name called  
<sup>32</sup> Rule 3, the Medical Termination of Pregnancy Rules, 2003  
<sup>33</sup> Rule 6, the Medical Termination of Pregnancy Rules, 2003  
<sup>34</sup> Rule 7, the Medical Termination of Pregnancy Rules, 2003  
<sup>35</sup> As per Rule 2(d), the Medical Termination of Pregnancy Rules, 2003; Owner in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.  
<sup>36</sup> Rule 8, the Medical Termination of Pregnancy Rules, 2003  
<sup>37</sup> Section 5 (1), the MTP Act, 1971  
<sup>38</sup> <http://edition.cnn.com/2017/07/28/world/india-rape-supreme-court/index.html> accessed on 27.09.2017  
<sup>39</sup> CWP/17/2017 decided by the Hon'ble Supreme Court of India on January, 16, 2017  
<sup>40</sup> Mrs. X & ors. Vs Union of India & ors., Writ Petition (Civil) No. 81/ 2017  
<sup>41</sup> <http://www.newsjs.com/url.php?p=http://www.thebetterindia.com/107368/sc-grants-permission-for-abortion-rare-case/> accessed on 01.10.2017  
<sup>42</sup> <https://indiankanoon.org/doc/134358850/> accessed on 01.10.2017