

Capitulating the Veracity of the Medical Termination of Pregnancy Act 2020

Edited By:

1) **Saumya Tripathi**

(Editor)

Saumya.judicateme@gmail.com

+91 9044382618

Publisher Details:

1) Saumya Tripathi

+91 9044382618

Address: Vikas Nagar, Lucknow

Email Address: Saumya.judicateme@gmail.com

Student Editor Name

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By Ajay Singh

From, Galgotias University

INTRODUCTION

“Abortion is defended today as a means of ensuring the equality and independence of women, and as a solution to the problems of single parenting, child abuse, and the feminization of poverty.”¹

Abortion was criminalized in India in the year 1860. Under section 312 of the Indian Penal code abortion was a crime unless it was carried out to save the life of a woman. The one who performs the abortion was liable to 3 years in jail and the woman herself was liable to 7 years in jail even then when the abortion would be carried out

illegally in unsafe condition thus there was a need to provide for a legal framework within which these abortion should be carried out in the safe environment. A committee was set up and it was headed by Shantilal H.Shah and based on the guidelines of Shantilal H.Shah Committee. Medical Termination of Pregnancy act was passed in the year 1971.

It was estimated that before the enactment of the Medical Termination of Pregnancy Act 1971 as many as five million of induced abortions were carried out in India every year, of which more than three million were illegal but perhaps not even one percent prosecutions and successful convictions taken.

The Medical Termination of Pregnancy Act, 1971 was enacted to provide for the termination of the certain pregnancies by the registered medical practitioners and for the matters connected therewith or incidental thereto. The said Act recognized the importance of the safe, affordable,

¹ Robert Casey

accessible abortion services to women who need to terminate pregnancy under the certain specified conditions.

The object of the Act, besides being the elimination of the high incidence of illegal abortions, is perhaps to confer on the women the right to privacy,² which includes the right to space and to limit pregnancies (i.e., whether or not to bear children), the right to decide on her own body.³ Another important feature of the Act is to encourage a reduction in the rate of the population growth by permitting the termination of the unwanted pregnancy on the ground that a contraceptive device failed.⁴

Section 3 of the Medical Termination of the Pregnancy Act, 1971 which is operative part, lays down the conditions under which a pregnancy may be terminated by registered medical practitioners.

A careful perusal of this section reveals that it has modified the strict provisions of the law of the abortion as contained under section 312 of the Code by permitting abortion in a number of situations. The section, inter alia, envisages that the termination of a pregnancy by a registered medical practitioner is not an offence, if the pregnancy involves:

- (i) A risk to life of a pregnant women; or
- (ii) A risk of grave injury to her physical or mental health; or
- (iii) If the pregnancy is caused by rape ; or
- (iv) There exists a substantial risk that, if the child were born, it would suffer from some physical or mental abnormalities so as to handicapped; or
- (v) Failure of any device or method used by the married couple for the purpose of limiting the number of children; or
- (vi) Risk to the health of the pregnant woman by the reason of her actual or reasonably foreseeable environment.

❖ Women's Right to Privacy:

The validity of abortion laws have been assailed on the ground of the constitutionality of 'right to life of an unborn vis-à-vis right of the mother to bear or not to bear a child'. The issue of abortion, therefore, has become a subject of public debate and courts' intervention in many countries, particularly, in the United States

² The U.S. Supreme court in the landmark decision, *Roe v. Wade*, 41 USLW 4213 (1973) has upheld the right of women to an abortion for the first three months of the Pregnancy as being the element in

the right of privacy given by the Fourteenth Amendment to the US Constitution .

³ *H.L. v. Matheson*, 450 US 398 (1980).

⁴ See Gazette of India, 17 November, 1969

and Northern Ireland. Some of cases which I have discussed below are directly related to the human rights aspect of the right of the state of the preserve and the protect the life of the unborn vis-à-vis the right to the privacy of the women. The right to privacy being the fundamental rights in India also contains right to abstain from procreating it. In *Roe v. Wade* the Supreme Court of the United States refrained from resolving the difficult question of when life begins and said that when those trained in the respective disciplines of the medicines, philosophy and theology are unable to arrive at any consensus, the judiciary is not in a position to speculate as to the answer.

Outdated Medical Termination of Pregnancy 1971

Development in medical science which includes medical abortion pills and vacuum aspiration which allows for safer abortions in advanced stages of pregnancy have found no legal resonance in the Medical Termination of Pregnancy Act. As there has been immense Progress in Medical Technologies which has made possible to identify chromosomal abnormalities in a foetus even in the later stages of pregnancies. Usually the foetal anomaly scan is done during the 20th-21th week of pregnancy.⁵

If we talk about the legal routes which are taken by women to get a formal permission for termination after 20 weeks, the process is often thwart and demanding for a mother already distressed by the bad news regarding her baby. Due to this very reason there has been spurred in cottage industries of places providing unsafe abortion services. According to the survey an estimated of 15.6 millions of abortions take place in the country and in the provided data almost 80% of abortion take place outside registered office or Illegally .

Validity of Present Medical Termination Bill 2021

The Bill states that the upper limit of termination of pregnancy will not apply in cases where such termination is necessary due to the diagnosis of substantial fetal abnormalities .These abnormalities will be diagnosed by a Medical Board. Under the Bill, every state government is required to constitute a Medical Board consisting of the following members:

- (I) a gyneacologist,
- (II) a pediatrician,
- (III) a radiologist or sonologist, and
- (IV) any other number of members, as may be notified by the state government.

⁵ <https://bit.ly/3dFBgZH>

Under The Medical Termination bill 2021 both married and unmarried may terminate Pregnancy up to 20 weeks if the termination is due to the failure of the contraceptive method or device. In case the Pregnancy has exceeded 24 weeks, advice from the Medical Board will be required in the case of substantial foetal abnormality. The present act focuses on confidentiality and medical practitioners will only be allowed to reveal details of the woman whose pregnancy has been terminated, to a person authorized by law.

The extension of limit has eased the process for the women, allowing the mainstream system itself to take care of them, delivering quality medical attention. The Delhi High Court has welcomed the Bill by allowing a woman to abort her more than 24 weeks pregnancy after taking note of a medical board's report that the foetus suffers from substantial abnormality.

The main problem in the recent amendment is that it requires the termination to be performed only by the doctors with a gynaecology or the obstetrics specialization. When we look at WHO the recommendation of WHO is that there should be one doctor for every one thousand population but if we look at India there is one doctor for every ten thousand one hundred eighty nine people. In the year 2018 the report was published according to

which we only have one thousand three hundred and fifty one gynaecology in rural area so there is a huge shortage of the specialized doctors because of the shortage of the doctors the women's will go for the abortion to the Quacks or unqualified people to carry out abortion therefore it will dangerous for the life and safety of the women and unborn.

The solution is to allow ayush practitioners, the staff nurses to carry out abortion. According to United Nation report India accounts for 45.8 millions of 'Worlds missing' families. The missing are those women who have been killed after their parents have come to know sex of the fetus. Doctors deny the above context by saying that most of the abortions happens at first semester which means within three months at that time sex of the fetus is unknown.

Comparison between the old and the new MTP Act:

Time since conception	Requirement for terminating pregnancy	
	Medical Termination of Pregnanc	Medical Termination of Pregnanc

	1971 Act,	Amendment bill , 2020
Up to 12 weeks	Advice of one doctor	Advice of one doctor
12 to 20 weeks	Advice of two doctors	Advice of one doctor
20 to 24 weeks	Not allowed	Two doctors for some categories of pregnant women
More than 24 weeks	Not allowed	Medical Board in case of substantial foetal abnormality

Any time during the pregnancy	One doctor, if immediately necessary to save pregnant women's life
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Law of Abortion Worldwide

Abortion is allowed in many countries in order to save a woman's life. The law relating to abortion in countries of Indian sub-continent, Asia Region and United Kingdom and United States differs widely on account of difference in attitude of the people, influence of religion and various other social, cultural disparity, economic and moral factors that influence the law makers in a country to permit or not to permit abortion with qualification. Worldwide, abortion is acknowledged as an important aspect of reproductive health of women:

The countries can be classified into four categories:

- (I) **Conservative Approach:** There are still **26** Countries that at present do not permit abortion under any circumstances includes **Egypt, Angola, Thailand, Indonesia**⁶,

⁶ Penal Code of Indonesia, article 346-349.

Philippines⁷ and Ireland⁸ where termination of pregnancy is illegal and punishable due to the societal and religious reason the countries still do not allow abortion.

(II) **Limited Approach:** There are **39** countries that still follow limited approach countries like **Bangladesh⁹, Pakistan¹⁰, Sri Lanka¹¹, Mexico, Brazil, Sudan, Malaysia¹²** permit abortion only to save the life of the mother under prescribed condition.

(III) **Liberal Approach:** Countries like **India¹³, United Kingdom¹⁴ and United States of America¹⁵** permit induced abortion under prescribed conditions as provided under the abortion legislations of the concerned country.

After passing of new version of 1971 law India will now stand amongst nation with a highly progressive law which allows legal abortions on a broad range of therapeutic, humanitarian and social grounds.

(IV) **Complete freedom to choose:** In Country like **India** it is still a dream

to have a complete freedom to decide for abortion by a women but It happened one of the case where the abortion was permitted at 31 weeks, very close to full term¹⁶.

Countries like **Singapore¹⁷** which permits abortion at the discretion of the woman with no restriction of any sort except that it should by registered medical practitioner in a hospital or a clinic approved by the government.

Conclusion

Women have every right to decide for her own body what is right and what is wrong. Medical board should not be the one to decide for women as women can take better decision for themselves than the medical board as there has been development in the technology and society is also progressing there were almost 300 petitions filed in Supreme Court and High Courts keeping in mind all these things law which has been passed by the Parliament is progressive in nature and somehow it is fulfilling the societal need at present which arose long time ago the government has been late in passing the current bill. This government is

⁷ Penal Code of Philippines, article 256-259.

⁸ Abortion Act, Section 7(2).

⁹ Bangladesh Penal Code, Section 312.

¹⁰ Pakistan Penal Code, Section 312.

¹¹ Penal Code of Ceylon, Section 303

¹² Malaysia Penal Code, exception to section 312

¹³ Medical Pregnancy of Termination Act, 1971, Section 3

¹⁴ Abortion Act 1967, Section (1)

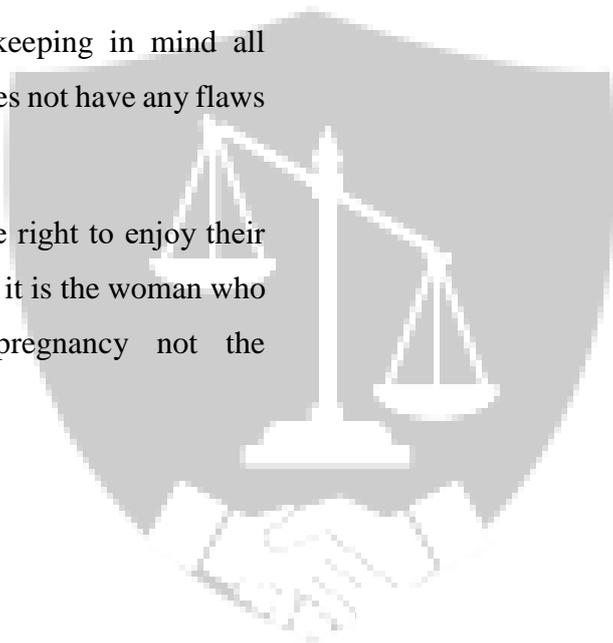
¹⁵ Roe vs. Wade, 41USLW 4213 (1973):

¹⁶ Murugan Nayakkar vs. Union of India & Ors

¹⁷ Termination of Pregnancy Act(Ch.324),section 3(1).

thinking about women's body like no other government. In the present bill we can see there has been liberal approach so this approach will be helpful in coming time. There are few things which are to be kept in mind earlier the Act only provided the abortion of rape victim and married but the 2021 bill provides for unmarried couples keeping the societal needs in mind as the society is changing so is the need of the people changing by keeping in mind all these things the bill does not have any flaws for the time being.

“Every women has the right to enjoy their Reproductive rights as it is the woman who has to carry her pregnancy not the government”.



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