



ABORTION: A TABOO IN INDIA

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ABSTRACT :

In the era of internet and technology where everything is on a rise the number of pregnancies in females are also increasing. But many times woman doesn't want to give birth to their unborn child due to many reasons, some of them are : a mother is not mentally prepared for pregnancy, may be she has physical issues or may be she got pregnant due to forceful intimacy like, rape or incest. So in these cases where a woman doesn't want to continue, she has right to abortion because it is her body and her consent. But for abortion consent is required, if the woman is major (above 18 years) then her own consent is required and if the woman is minor (below 18 years) then her guardian consent is required. In India, abortion is legal after enacting of various laws and as a result some people consider abortion as a boon for female while some says that 'Abortion is not less than a murder'. This article solely focuses on various ways of abortion a women can go through, various consequences a woman faces post abortion and legal scenario of abortion in India.

Keywords of the Article : Abortion, termination of pregnancy, therapeutic, justifiable, rape, incest, causing miscarriage, criminalised abortion, reproductive laws, MTP Act, pregnancy period, safe abortion.

¹Government of India, Medical Termination of Pregnancy Act, Act No.34, 1971.

INTRODUCTION :

India has pledged itself to safeguarding human and reproductive rights and 'Abortion' is one of them. Abortion refers to the process of ending of a pregnancy by removal or expulsion of an embryo or fetus. The term 'Abortion' is also known as termination of pregnancy. When an abortion takes place naturally, in that case it is called as miscarriage and sometimes it may be brought deliberately, in which case it is often called as induced abortion. Induced abortion has been legally allowed in India on broad-ranging grounds since 1971¹. This abortion may takes place due to following reasons such as to protect the life of the mother, to avert the completion of a pregnancy that has resulted from heinous crimes like rape or incest, to put an end to birth of a child having mental deficiency, serious deformity, genetic abnormality or may be because of other reasons like social or economic reasons. By some definitions, abortion is therapeutic and justifiable in case to protect the female's health or in case of rape or incest. Here in India, cost of abortion may from Rs 5000- to Rs 30,000 depending on the kind of procedure that is undergone². Herbal abortion is an alternative way of abortion which includes the use of herbs to trigger a miscarriage. Although this procedure is not completely an alternative to an abortion, having the baby and giving it up for adoption may also be considered.

TYPES OF ABORTION:

²Dr. Anand Bhatt, Abortion- Treatment, Procedure and side effects, lybrate.com, May 26,2020, (July 12,2020, 18:41 PM), <https://www.lybrate.com/topic/abortion>.



There are various types of abortion(termination of pregnancy)and they are discussed below:-

- Early non-surgical abortion (medical): This abortion is carried out between 2 to 10 weeks of pregnancy. Under this procedure, to stop the process of pregnancy the drug is prescribed. After the consumption of drug, there may be cramping, clotting, bleeding or pelvic pain and within a few hours women pass the unborn child.
- Vacuum aspiration : This abortion is performed between 2 to 12 weeks of pregnancy. Under this process, near or in the cervix local anesthetic is injected and then the unborn child and the placenta is suctioned out through the tube.
- Dilation and evacuation: This procedure is performed in the 13-21/22 weeks of pregnancy. Under this process, a sponge-like material is placed in the cervix of the women that helps to open the cervix slowly and medication is given to mother to cure the pain and avert infection. General anesthesia is given to the mother and the child. After that with the help of suction curettage and forceps the unborn child and placenta are removed from the womb.
- Induction abortion: This process is performed in 13-21/22 weeks of pregnancy. In this process of abortion, the placenta cannot be removed completely during the labor and the cervix is kept open for the doctor convenience to perform suction curettage.
- Labor Induction : This process is performed in 22-29 weeks of pregnancy. In this process, the placenta cannot be removed completely during the labor and cervix is kept open to perform suction curettage. But in this procedure, it is possible that the child is delivered alive and if this happens then the

baby will be taken care by the doctors of the hospital.

- Hysterotomy (similar to C-section) : This procedure is performed in the 22-38 weeks of pregnancy. When there are no possibilities left for termination of pregnancy then this procedure is done. In this procedure, the unborn child is removed by cutting the abdomen and uterus and after the removal, the unborn child is killed.

PROS AND CONS OF ABORTION (TERMINATION OF PREGNANCY):

Procedure of abortion may sound like a easy way to terminate the pregnancy. The decision of ending pregnancy is a difficult one but it may have to be done keeping the best interest of the mother and the child.

Every procedure has its pros and cons and same applies with the procedure of abortion. This procedure surely has its pros and cons that are discussed below:-

~ Pros of abortion are as follows:-

- Abortion is seen as a safe medical procedure and there is minimal risk of serious complications if abortion is done in the first trimester of pregnancy. Furthermore, it does not affect the health of the women and future ability to bear a child in her womb.
- Abortion can be done if the foetus is diagnosed with genetic disorder like Down's syndrome.
- Sometimes even after using contraceptives, pregnancy occurs and in that case Abortion is the best option to be done for the birth control of unwanted pregnancy.
- Teenage girls who become mother can have harsh consequences in future and in that case, abortion early in the pregnancy is the best way rather than becoming a mother.

~ Cons of abortion are as follows:-

- If an abortion is done after the first trimester of pregnancy, a women could face various



complications like heavy blood loss, moderate to severe pain and infection. If abortion done in later stages, then it could result in more critical situation and can cause medical conditions like sepsis or even death.

- If an abortion get delayed then it's long-term complications may include cervical complications and abnormal placenta development.
- Abortion also have physical side- effects and it can leave a women infertile. Past studies have suggested that women who have had abortion, were more likely to have miscarriage, premature birth and pregnancy/birthing complications in later pregnancies.
- A study at the Bowling Green State University in Ohio suggested that abortion can cause psychological problems. After abortion, a woman may suffer from serious mental illness like mental distress, depression or guilt due to the feeling of regret and shame about the decision.

INDIA'S LEGAL SCENERIO OF ABORTION:-

To protect the human being in both aspects i.e., mental and physical, should be the top and first priority of every country. In the same way, to protect a women's life, health and mental state liberalisation of abortion law was very important and urgent as well in India. As a result various reforms and laws have been made to legalize the abortion in India.

Some of them are discussed below³:

- In October 6,1860, section 312 of India penal code 1860,criminalised abortion dubbing it as "causing miscarriage".

- During 1960s, after the legalization of abortion in 15 countries, the Shantilal committee report came out which suggested that abortion and reproductive laws need to be regulated in India.

- In August 10, 1971, the Medical termination of pregnancy (MTP) was passed and this played a very prominent role in legalisation of abortion in India.

- In December 18,2002, the MTP Act was amended. Under this amendment, law of abortion was decentralized and penal sanction were adopted for unapproved abortions that led to the formation of MTP rules in 2003 and these rules increase access for ladies especially within the private health sector.

In October, 29, 2014, to amend the prevailing MTP bill the Union Ministry Health and Family Welfare proposed a draft bill. Major amendments proposed included are:-

~ Increase the biological time for terminating the abortion to 24 weeks.

~ Raising the provider base of abortion services by including registered health practitioners to conduct abortions after specified training.

~ It also abolished the precondition of the opinion required of a registered health professionals, whether to abort or not, just in case of pregnancies not exceeding 12 weeks.

~ Just in case of pregnancies exceeding 12 weeks but not 24 weeks, it reduced the quantity of opinions required by a medical man from two to at least one, extending more rights to women over their pregnancies.

~ Under the contraceptive failure clause "married women" replaced with "all women" which would help unmarried women to get

³Rohan Gupta, Abortion in India: Experts call for changes, [downtoearth.org.in](https://www.downtoearth.org.in/news/health/abortion-in-india-experts-call-for-changes-66369), August 27, 2019, (July 12,2020, 22:00 PM),

<https://www.downtoearth.org.in/news/health/abortion-in-india-experts-call-for-changes-66369>.



safe abortion in case of failure of contraceptive.

- In November 6, 2014, the India Medical Association (IMA) aversed the bill, questioning the amendment which raised the provider base of abortion services.
- In August 4, 2017, MTP amendment bill, 2017, was introduced within the Rajya Sabha which planned to uplift the pregnancy period of abortion to 24 weeks. In January 2018, the identical bill, 2018, was introduced within the Lok Sabha with the identical demand to interchange the 20 weeks duration with 24 weeks and also added that in case of rape survivor it should be uplift 27 weeks.
- In December 28, 2018, the women's sexual, reproductive and menstrual rights bill was introduced by Shashi Tharoor, which also sought to do away with the pre-condition of a medical practitioner's opinion just in case of pregnancies not exceeding 12 weeks. But the bill didn't interfere with the biological time limit 20 weeks.
- In May 29, 2019 petition filed by Swati Agarwal, Garima Sekseria and Prachi Vats in Supreme Court challenged the 20 weeks gestation limit saying that evolution in science and technology has made it possible to terminate pregnancies at later stages. It also asked for amendments in section 3(2)(a) of the MTP Act on the basis that they violate Article 14 and 21 of the constitution.
- In May 26, 2019 Amit Sahni filed a PIL in Delhi High Court demand to substitute the 20 weeks with 24 weeks.
- In may 28, 2019 Delhi High Court issues a notice in plea to the Centre demanding to extend the duration of termination of

pregnancy by 4 to 6 weeks more in case of mother's health risk or foetus.

- In April 24, 2019, notices issued by Madras High Court to the Centre and state government seeks to extend the period for termination of pregnancy as a matter of urgency.
- In August 2, 2019, Union Health Ministry submitted Affidavit in response to the PIL filed by Amit Sahni. This affidavit stated that draft Medical termination pregnancy MTP amendment bill, 2019 has been sent for inter-ministerial discussion.
- In Transfiguration day, 2019, Supreme Court issued a notice to the Centre seeks its response to the PIL filed by Swati Agarwal, Garima Sekseria and Prachi Vats.

LANDMARK CASES OF ABORTION :

The law that plays a very important role in legalisation of abortion in India is the Medical termination of pregnancy Act 1971. This Act states that if there is any risk to woman's health or her child then her pregnancy can be terminated by a registered medical practitioner up to the 20th week of pregnancy and with the help of section 5, termination of pregnancy is possible beyond 20 weeks if it is immediately necessary to save the woman's life.⁴

There are various landmark cases that have come before the Court and whose decision was taken on the basis of report produced by Medical Board. In some of the cases, termination of pregnancy are allowed even after 20 weeks of pregnancy and in some cases termination got rejected. Few cases are discussed below:-

- Mrs. X v. Union of India⁵:

⁴Shradha Thapliyal, Abortion jurisprudence in the Supreme Court of India: Is it the woman's choice at all?, clpr.org.in, February 8, 2019, (July 13, 2020, 20:50 PM), <https://clpr.org.in/blog/abortion->

[jurisprudence-in-the-supreme-court-of-india-is-it-the-womans-choice-at-all/](https://clpr.org.in/blog/abortion-).

⁵ Mrs. X And Ors. Vs Union Of India, Writ Petition(Civil) No. 81 Of 2017.



In this case, 7 member Medical Board suggested that continuation of pregnancy could gravely endanger the woman's physical and mental health. The court held that "a woman's right to make reproductive choices is also a dimension of her 'personal liberty' under Article 21 of the Constitution" and that the every woman has right to bodily integrity which allows her termination of pregnancy.

Hence, in this case, Supreme Court gave the permission for termination of pregnancy of a 22-week old pregnancy.

- Murugan Nayakkar v. Union of India & Ors. W.P.(C) No. 749/2017⁶

In this case, Supreme Court allowed the termination of 32-week old pregnancy of a 13-year old rape victim on the basis of report of the Medical Board which constituted that a rape victim has suffered a trauma because of the Sexual abuse.

- Savita Sachin Patil v. Union of India⁷:

In this case, report of Medical Board opined that there was no physical risk to the mother but the fetus had severe physical anomalies. Hence, on the basis of the report, Court rejected the termination of a 27-week old pregnancy.

- Alakh Alok Srivastava v. Union of India W.P.(C) No.565/2017⁸:

Court did not allow the termination of pregnancy to the 10-year-old rape victim who was 32-week-old pregnant. Because the report of Medical Board opined that termination of pregnancy was more hazardous than the continuation of pregnancy.

⁶Murugan Nayakkar v. Union of India & Ors. W.P.(C) No. 749/2017.

⁷ Savita Sachin Patil And Another v. Union Of India And Others, Writ Petition (C) No. 121 of 2017.

⁸Alakh Alok Srivastava v. Union of India W.P.(C) No.565/2017.

AWARENESS AMONG WOMEN:

The Medical Termination of Pregnancy Act (MTP Act) was created in 1971 and focused on the mother's safety in line with the technology available at that point of time. In line with this Act, abortion may be permitted to women facing the birth of a potentially disabled or malformed child within a 20-week pregnancy period. Section 3 of the Medical Termination of Pregnancy Act (MTP) Act, 1971, stated that abortion is allowed if continuance of the pregnancy could include a risk to the life of the pregnant woman or cause serious injury to her physical or mental health, or there is also a risk to the unborn child, may be suffer from physical or mental health abnormalities and Section 3(2)(b) of the same Act forbids the abortion of a foetus after 20 weeks of pregnancy unless a direction to that effect is given by a high court after taking into consideration a report from an expert medical team of any state-run hospital.

Discussing on this topic, Delhi health department in a recent RTI reply stated that only one in ten abortions in the city are appeared, while over 50,000 termination of pregnancies (abortion) have taken place in the last five years⁹. There are so many women in India who are unaware about the fact that Abortion is legal in India under the Medical Termination of Pregnancy Act. Therefore, several women go through the unsafe abortion and later face several negative results and if the medical abortion process goes even slightly wrong, it can give outcome

⁹Pooja Biraia Jaiswal, More awareness needed on safe abortion methods, theweek.in, April 10, 2019, (July 16, 2020, 22:43 PM), <https://www.theweek.in/news/health/2019/04/10/more-awareness-needed-on-safe-abortion-methods.html>.



in life menacing complications such as ruptured ectopic, hemorrhage, etc. and can also have serious morbidities like PID, infertility etc. This is the reason I repeat that only lawfully allowed trained personnel who are postgraduates and qualified must be permitted to perform the procedure. Individual who doesn't have MBBS degree must be given the permission even if there is a scarcity of trained doctors, because then it will be injustice to the patient.

So every woman should know about the Medical Termination of Pregnancy Act and should aware that A woman can safely terminate her pregnancy within 20 weeks of pregnancy under the observation and guidance of one or two health practitioners and for those who want to terminate it beyond 20 weeks, must seek approval from the courts.

CONCLUSION:

Abortion is the procedure of putting an end to the pregnancy. Laws in India like Medical termination of pregnancy (MTP Act) and various other made the Abortion legal in India. Abortion is one of the effective way of controlling population because many a times pregnancy occurs due to failure of contraceptives and sometimes parents of an unborn child is not ready to bear a child. Abortion plays an important role in case of rape or incest. But the procedure of Abortion has negative impacts as well such as a mother suffers from mental trauma or may not able to get pregnant in future. Abortion is such a big decision that every women who is going to have abortion (induced abortion) must keep in mind positive impacts as well negative impacts. Every citizen should comprehend that procedure of Abortion got 6egalized in India for a good cause and not for a evil practice. Therefore, everyone

should make an oath that Abortion or termination of pregnancy must take place for the welfare of either mother or a child and Abortion must not occur for the illegal work or evil practice.

