



MEDICAL TERMINATION OF PREGNANCY AND INDIA- A LEGAL OUTLOOK

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ABSTRACT

When a complex issue of society marries political ideologies, the need to make specific laws arises.

Abortion laws are these specific laws that need to be administered in a society such as ours to regulate the legality and remove the stigma surrounding pregnancy in our nation. The extensive socio-legal studies and their data are already on public platforms, so, for the sake of brevity will not be repeated. However, This paper will examine the detailed legal history of Abortion laws, their need to be 'liberal' in a society such as ours, the Medical Termination of Pregnancy act, 1971 and its various amendments and will also lay down a nexus between the objective of the legislation and the actual execution in today's time and age. This paper is not another exhaustive debate on Pro-life or Pro-Choice. Instead, it is an analysis that moves further from the primary argument for abortion and heads into a space of the faulty execution of the legislation.

INTRODUCTION

A few issues have dominated the world's political landscape, which rattles a few conservatives or disturb the equilibrium for the liberals. As a nation, India has often converged on such political issues to be

religious or casteist in nature or uplift our society's backwards. However, one issue that seeks to emancipate women but treads closely on religious grounds is controversial, but the Indian legislature has emerged victorious. The liberal legislation for abortions guaranteed safety to women's health and a choice to make decisions regarding their bodies, irrespective of religion or class, but unfortunately, the execution of said laws has not culminated in this dream.

Abortion/miscarriage is the spontaneous or induced termination of pregnancy before the foetus is independently viable, usually after the twenty-eighth week of conception. Legally miscarriage, abortion and premature labour are used as synonymous terms indicating any termination of pregnancy at any stage before confinement.

Women can seek an abortion for various reasons, if it is an unwanted pregnancy or the foetus is medically unviable or has a foreseeing medical condition or if the pregnancy is a result of rape or failure of contraception. However, all these reasons and any other valid reason legally question how to regulate the law to make it accessible, safe and non-restrictive. This conundrum was answered by the Medical Termination of Pregnancy Act, 1971.

RESEARCH METHODOLOGY

OBJECTIVES:

The research objectives of this study are as follows:

1. To study the history of abortion laws in India.
2. To overview the legislation for Medical



Termination of Pregnancies.

3. To provide plausible solutions to the ever-growing problem of stigma surrounding abortions.
4. To overview the "liberal legislation" with actual execution.

RESEARCH QUESTIONS:

- What is the status quo of women with the liberal legislation?
- What is the impact of said legislation on safer abortions?
- Whether there are any loopholes in the current legislative provisions and the amendments for the same?

SCOPE & LIMITATIONS:

The Scope of this research is to understand the status of women in our society and accessibility of abortions, the safety measures vis-à-vis the stigma surrounding abortions. The approach examined and analyzed the existing framework of legislation and the proposed amendments. The Scope of the research is limited to the status quo and does not divulge into Pro-life/Pro-Choice debate.

HISTORY AND EVOLUTION OF ABORTIONS

Foeticide was outlawed and categorised as murder, alongside non-observance of the Vedas, incest, and the use of alcoholic beverages. The Buddhist, who condemned the destruction of life, laid down that Bhiku "who intentionally destroys a human being by way of abortion, is no Samana and no follower of Sakeyaputra." The 'Holy Quran' forbids the murder of children. Those who kill their children without knowing it and

deny themselves of what Allah has given them have gone astray. Abortion was considered a grave sin by the Didache, an essential source of Christian law, and was included in the 'Ten Commandments,' which list the prohibited activities. Every person, including the 'unborn child' in their mother's womb, has a natural right to life from Almighty God, not from parents, society, or other authority. These religious texts lay down their aversion to abortion, but its impact in the world as of today is more than what religion has to offer. It is about an advanced way of living, and it is about more contact with the other sex, increased life tendency and equality in the economic sphere. Life no longer is about women tending to their man and birthing multiple children as their sole purpose.

Abortion in India dates back to ancient Indian history, and the Indian text does not explicitly mention the beginning of life; some religious texts state that life begins at conception, others when the foetus moves and others when the child breathes independently of the mother. These different takes on the beginning of life constitute a whole debate on its own, which is the essential crux of the whole Pro-life and Pro-Choice conundrum, which is not the object of this paper. However, it is necessary to note from a legal point of view the objective of the lawmakers legislating this 'liberal' abortion law. Post-independence, when the Central Government sought to control the population, it needed to formulate liberal abortion laws. Nevertheless, it faced a prevalent problem, the hurting of religious sentiments, which is essentially the platform of Indian legislation and politics. To imagine Indian legislation without religious influence is amateur and wrong in research. Before the formalisation



of abortion laws in India, precisely in 1971, nearly four to five million illegal abortions were performed in India, in shady clinics with non-competent practitioners, due to the negative connotation attached to the practice of abortions.

These illegal abortions procedures were usually undertaken by widows who were refrained from remarriage due to the taboo attached to them or unmarried women who got pregnant, which is a whole other social anathema.

With two objects in mind, the Central Government constituted a committee headed by Shantilal Shah to draft the abortion laws of India. The committee consisting of doctors, lawyers, and social workers sent a questionnaire to several institutions, and it is the committee's exhaustive report, which is the basis for the Medical Termination of Pregnancy Act, 1971. Another stumbling block that the government sought to overcome was the existing British Laws in the Indian Penal Code, sanctioning abortion or criminal abortion enumerated from section 312 to 316, severe offences against women. The Indian Penal Code punishes both woman and abortionist that caused 'miscarriage', except when the mother's life is at stake. Before the committee gave its suggestions, these pre-existing conditions influenced the outcome to stipulate a relatively liberal law in a country steeped in orthodoxy and tradition. The Medical Termination of Pregnancy Act, 1971, was groundbreaking legislation that took the challenge head-on with traditions because it strived to control an overreaching population but not with the object to ameliorate the status of women or give them a choice to administer decisions for their bodies.

The act has eight sections that identify when a woman can medically terminate her pregnancy. It identifies that any pregnancy before the twelfth week can be terminated with the opinion of one medical practitioner, and any pregnancy till the twentieth week can be terminated with the opinion of two practitioners.

The interesting point of view to note is that of the government's response to this legislation, on the one hand having created a liberal law to emancipate the women, with the ultimate objective to control the population, but on the other hand trying hard to cover the intention and objective from its people in fear of hurting the very religious sentiments, and feeding the orthodox sentiment of the society. This attitude of the government to safeguard its vote-banks, to try and control and head the population in streamlined conservatism is the real reason why legislation has been inept in trying to bring about holistic change.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The revolutionary legislation that disrupted the status quo for two significant stakeholders, the pregnant women and the medical practitioners, has the following features:

1. The act defines lawful abortion of the foetus and empowers the women to decide whether to continue the pregnancy or not.
2. This liberal law allows for termination of pregnancy for social and socio-economic reasons but only by a registered medical practitioner.
3. The act also allows for the lawful termination of pregnancy when there is a danger to the pregnant woman's health, and the noteworthy



point is that this legislation considers physical and mental health.

4. The act allows pregnancy termination when the foetus is at substantial risk to be independently viable with a severe handicap.
5. The humanitarian reason enumerated in the legislation is that it allows for pregnancy termination when said pregnancy results from rape.
6. The controversial ingredient for reasons to terminate pregnancy includes a provision for termination when any pregnancy occurs as a result of a failure of any device or method used by any married woman or her husband to limit the number of children, the anguish caused by such unwanted pregnancy may presume to constitute a grave injury to the mental health of the pregnant woman.
7. However, when an unmarried woman has an unwanted pregnancy due to the failure of contraceptives, it is not included in the same mental anguish. Thus, the legislation has made an unequal differentiation because of society's ideals that only married women pursue that sexual relation.
8. In determining whether the continuance of the pregnancy would involve such risk to the pregnant woman's health, the account of the pregnant woman's actual or reasonably foreseeable environment is necessary, and this is the social clause that was added to the legislation.

However, this is what the law states; the Indian Medical Council, while making its report on the ethical fallacy of female foeticide, inferred that this rule legislated is widely misused in our society, which converges the discussion into an essential evil of our society- sex-selective termination of pregnancy.

SEX-SELECTIVE TERMINATION OF PREGNANCY

Sex-Selective termination of pregnancy is an issue that the government has aimed to tackle from the various legislation drafted. The sex ratio of our country is abysmal, with a steep decline in child sex ratio through the last three decades. According to the census, the child sex ratio had declined from 945 in 1991 to 927 in 2001 and 914 in 2011 per 1000 boys. Alarmingly, the urban areas, more literate and therefore perceived as more modern, have shown a steep decline of 29 points from 935 in 1991 to 906 in 2001. The situation is significantly worse in the North-Western states of India, with Punjab recording the maximum decline of 77 points in child sex ratio from 875 in 1991 to 798 in 2001, followed by Himachal Pradesh, Chandigarh, Delhi and Gujarat.

This decline signifies our society's attitude towards girl children, and the reasons to enumerate them are plenty in both our legislative and cultural history. Nevertheless, to tackle this rather severe issue and the rampant misuse of modern technology to aid female foeticide, our legislature enacted the Pre- Natal Diagnostic Techniques (PNDT) (Regulation and Prevention of Misuse) Act 1994. The act aimed to regulate modern technology to detect any genetic or metabolic disorder and prevent using this technology to aid female foeticide. Although the legislation is stringent, its implementation was flawed. Thus a Public Interest Litigation was filed in the case of Centre for Enquiry into Health and Allied Themes (CEHAT) versus Union of India, wherein the Supreme Court held that it was unfortunate that advanced medical science is misused to get rid of a girl child before birth. The populous is aware of its



ethical and immoral shortcomings and it being a criminal offence and the qualified medical staff were part of this unethical and illegal act. The Hon'ble Court also stated that amendments to the act were necessary, considering emerging technologies and difficulties in implementing the act. Subsequently, after the judgement, the court ordered ten interim orders directing the various government organisations to implement the act.

Therefore, the amendment in 2003 of the PNNT Act led to the creation of Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) (Prohibition of Sex-Selection) Act, 2002.

This amendment filled the lacuna of the pre-existing act of including pre-conception techniques in the ambit of the law and prohibiting and regulating the use of advanced technology to prevent the misuse of female foeticide.

The features of the PCPNDT Act are as follows-

1. The act prohibits sex selection before or after conception. It regulates and does not ban the use of Pre-Natal Diagnostics such as ultrasound for detecting genetic abnormalities.
2. The act specifies that no gynaecologist or registered medical practitioner would conduct an ultrasound at any other place other than a place registered under the act.
3. The act further specified that any registered medical practitioner, nursing home, or hospital that does ultrasound tests is required by law to state that they do not do sex determination.
4. Also, the act specified that the State Medical Council has the power to cancel the

registration of any doctor if found guilty of violating the law prescribed under said statute.

5. The act stipulated that no Pre- Conception or Pre- natal diagnostic techniques can be used for any purpose other than detecting any genetic or chromosomal, and congenital abnormalities.
6. The act also mentions that written consent of the pregnant woman is mandatory undergoing any Pre- Conception or Pre-Natal diagnostics.
7. Further, the act mandates that the sex of the foetus shall not be communicated to the woman or a relative by words, signs or in any other manner.
8. The act also mentions that contravening any provision of the said act will attract a punishment of three years imprisonment and a fine of Rs. 10,000.
9. Furthermore, any person seeking help for sex selection can face three-year imprisonment and a fine of Rs. 50,000.

AMENDMENTS TO THE ACT

Three significant amendments have shaped the law as it stands today-

MTP amendment act 2002:

The Medical Termination of Pregnancy (MTP) Act 1971 was amended in 2002 to better execute and increase access for women, particularly in the private healthcare sector.

The amendments to the MTP Act in 2002 decentralised the endorsement of a private spot to offer abortion administrations to the regional level. The District level advisory group can endorse a private spot to offer MTP administrations to build the number of



suppliers offering CAC administrations in the legitimate ambit.

The word 'lunatic' was subbed with the words 'mentally ill person'. This language adjustment was founded to emphasise that a "mentally ill person" signifies an individual deprived of treatment because of any psychological issue other than a mental hindrance.

For guaranteeing consistency and wellbeing of women, stricter punishments were presented for Medical Termination of Pregnancies being led to unapproved destinations or by undeveloped clinical suppliers by the act.

The MTP Amendment Bill 2014:

The MTP Amendment Bill 2014 was presented in the parliament but never culminated into legislation because of the backlash it received from the medical community, and a heated debate ensued in the society regarding the abortion laws. This 2014 amendment proposed changes such as the following- non-physician practitioners as abortion care providers in the first trimester; abortions at a woman's request up to 12 weeks gestation; extend the period of legal abortion up to 24 weeks gestation for specific indications, and remove the requirement of two certified doctors for abortions after 12 weeks gestation. The Population Council undertook the changes based on the findings of a project between 2006 and 2011.

MTP amendment ACT 2021:

On January 29, 2020, the Government of India first introduced the MTP Amendment bill passed in the Lok Sabha on March 17, 2020. A year later, the Bill was placed in Rajya Sabha and was passed on March 16,

2021, as the MTP amendment ACT 2021. The Amendments are as below:

- a) The MTP Act earlier permitted termination of the pregnancy by only a married woman in the case of failure of contraceptive method or device. With the amendment, unmarried women can now seek safe abortion services on the grounds of contraceptive failure.
- b) Under the MTP Act 1971, the time limit for terminating the pregnancy was up to 12 weeks on one doctor's advice and up to 20 weeks on the advice of two doctors. Moreover, post 20 weeks, terminating the pregnancy was not permitted. However, now all women can terminate pregnancy up to 20 weeks on one doctor's advice, and special categories of women (survivors of sexual abuse, minors, victims of rape, incest, differently-abled women) can seek termination up to 24 weeks. Moreover, women/couples can seek termination of pregnancy anytime during the gestation period for foetal anomalies, as diagnosed by the Medical Boards.
- c) The amendments mandate the constitution of Medical Boards in all the states and union territories for diagnosing substantial fetal anomalies. The board will decide if pregnancy may be terminated after 24 weeks, and each board will have a gynaecologist, radiologist/oncologist, paediatrician and other members notified by the government.
- d) A registered medical practitioner may only reveal the details of a woman whose pregnancy has been terminated to a person authorised by law. Violation is punishable with imprisonment up to a year, a fine, or both.



CONCLUSION

In conclusion, the legislation and its amendments spike the need to create a more holistic abortion law to include all women and give them the platform to choose their rights. The liberal legislation of India, when compared with other laws of the world, clarifies the need in an overly populated country for it. The taboo, however, of sex-selective termination is a menace that has engulfed the Indian landscape, and this problem stems from the archaic patriarchal society that is trying hard to ameliorate its women. The amendment of 2021 promises better healthcare for women, more freedom, and today's technology makes it possible to ensure better options.

Also, doing away with the clause on married women for the failure of contraception is a step towards a brighter- more egalitarian future required for the nation.

The requirement of liberal laws has been established; however, the execution of these laws for actual tangible change is necessary and the way forward.

Abortion legislation in India has seen many whirlwinds. Nevertheless, unfortunately, the stigma attached to it has not changed a bit; from time immemorial, the prejudice attached to a woman's identity of 'no control' with the woman herself, and that is what this new amendment challenges and thus the importance of it recognised.

The stakeholders of this legislation, apart from the women, are also the medical community, and how they help enforce the law, the regulations prohibiting disclosure of

the sex of the baby and strict laws for this are a step forward.

Medical Termination of Pregnancy is in that sphere of the legislature that its requirement for execution is necessary, and work from the ground up is the only way forward.
