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ABORTION LAW REFORM IN INDIA – AN ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY ACT,1971.

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ABSTRACT

There have been many monumental judgements protecting women's health, but there is a lot of ambiguity attached to the same in our country, the fact that around 56 million induced abortions take place each year globally, and 15.6 million abortions occur in India alone, the procedure is shrouded in layers of misinformation and judgment. Body autonomy is still a grey area, with religious beliefs and patriarchal values littering the course.

Medical Termination of Pregnancy Act,1971. There are two main research questions which have led the entire paper to a new direction and a new thought towards the lives of the women and the unborn children too. The paper comprises the basic facts which led to the emergence of the MTP Act, mentioning who has the authority to perform such an act and also under which conditions. It also involves the certain amendment that has brought about changes in the act and how every decision of the board has affected the women of the society.

Towards the second half, the paper explains on how abortion is just not a medical act but also series of human conduct, moral evaluation, an interference with the body for a curative issue and also certain sanctions enforced by the state under the law. In technical terms, abortion means ending a life after conception and before the birth.

It can be categorized into distinct concepts: natural or accidental or spontaneous or artificial or induced abortion. There are different laws with regard to abortion in different countries. Some may say it is a crime while some may say that it is a choice. The paper also considers the matter of consent for termination of pregnancy and explains in detail why it is important and the

relevance of the same in the present scenario. Towards the end, it suggests suitable measures and remedies to combat the concerned issue.

INTRODUCTION –

Abortion, a subject often discussed in the medical circle, includes a lot of thoughts and theories because it involves different perceptions of societies, religions, law and medicine. This topic is a less-discussed issue among the people. Least majority of the people understand the intensity of the situation which is one of the few reasons for me to pick up this topic for my research. Further, my paper will contain the major facts, laws, perceptions and process in relation to abortion. This is a matter where we are speaking about the death of a life, be it voluntarily or involuntarily. The centre of attraction belongs to “The Medical Termination of Pregnancy Act, 1971 which gives the basis of this issue.

We are looking up to one of the most severe conditions in which women suffer the most and at times don't even get to speak up for their own rights. At times women are forced to carry a child when she does not even stand in a place where she is capable of bringing a life on earth, physically or mentally. Illegal abortions are performed far more frequently in India with their disastrous results. Even today in spite of liberalization of the Medical Termination of Pregnancy Act, two cases of unsafe abortions are reported where the procedure was administered by doctors with none training in midwifery and birth control. One patient had extensive small bowel injury secondary to uterine perforation but survived whereas the opposite expired thanks to septicaemia, peritonitis, disseminated intravascular coagulopathy following uterine perforation.

From here on, this article will provide with the various amendments, setbacks, issues, opportunities and solutions in accordance with the Medical Termination of Pregnancy Act, 1971. It is just not about the rights but also the basic amenities including the health that we are concerned with.

Research Question

The main motive of my research is to figure out solutions or the aid with regard to the following questions:

1. Why is the MTP Act still unable to provide the right and comfort to the women as it claims to do so?
2. Why does it not have proper amendments to increase an affirmative effectiveness on the lives of the women?

- **The Medical Termination of Pregnancy Act, 1971**

During the last thirty years many countries have liberalized their abortion laws. The worldwide process of liberalization continued after 1980. Today only 8% of the world's population lives in countries where the law prevents abortion. Although the bulk of nations have very restricted abortion laws, 41% of girls sleep in countries where abortion is out there for the asking of girls. In India, Shantilal Shah Committee (1964) recommended liberalization of abortion law in 1966 to scale back maternal morbidity and mortality related to illegal abortion. On these bases, in 1969 Medical termination of pregnancy bill was introduced in Rajya Sabha and Lok Sabha and passed by Indian Parliament in Aug. 1971.¹ The Medical Termination of Pregnancy Act, 1971 (MTP Act) was implemented from Apr.1972. Implemented rules and regulations were again revised in 1975 to eliminate time consuming procedures for the approval of the place and to form services more readily available. The MTP Act, 1971 preamble states" an Act to supply for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto".

Only a medical practitioner who has a certain qualification has the lawful authority to carry on the process of abortion. This condition for the termination of pregnancy has been defined in section 2(d) of the Medical Termination of Pregnancy Act which states that "registered medical practitioner" means a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.

¹Medical Termination of pregnancy act 1971 overview, Legal Services India (10th may,2020), <http://www.legalservicesindia.com/articles/pregact.htm>

Conditions for when medical practitioners can terminate pregnancy:

1. 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.
2. Subject to the provisions of sub-section (4), a pregnancy may be terminated by medical practitioners:
 - 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-
 - 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; or²
 - 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.
3. In determining whether the continuance of a 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 reasonably 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.

²MTP act 1971, Ministry of Health Affair (10th may,2020),<https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971>

(b) Save as otherwise provided in clause (a), No pregnancy shall be terminated except with the consent of the pregnant woman.

- **AMENDMENT IN THE MTP ACT**

The Union Cabinet's approval has made an amendment in the bill in January 2020 which has built a small step forward. Now, a lot of people are unaware of this amendment and as a matter of fact this is the first amendment to the act in the past 49 years. In this amendment the gestational period has been increased from 20 weeks to 24 weeks.³ This means the woman can abort her child within 24 weeks of pregnancy. However, this kind of allowance is applicable to women in "special cases" which may include women that are rape survivors, differently-abled, minors, etc. There is a different and special Medical Board whose composition, duties and other details will be mentioned in the act and this board will be the one who will decide whether the women can abort the child or not on this ground of reason.

There are various countries which have a longer gestational period and it is completely a women's right but in India it is still a conditional right. The MTP Act guarantees full care and opportunity for those women who seek abortion. However, the current amended MTP Act does not provide to be women-centric and does not turn out to be a lot progressive. The full draft of the bill is yet to be circulated among the people. The amendments can be a lot better by allowing the women to take their decision on abortion. It is clearly visible that the government is trying to take certain initiatives for the betterment of the women but unfortunately, they are not being able to execute their steps properly.

The Cabinet approved amendment has a special clause which strictly orders the authority not to disclose the name or address of the women who is opting for abortion to anyone except to a person who is authorized to be known of such information under the law. With the passage of time, we have seen that there are immense barriers against abortion, be it lawfully or religiously. For a vast majority of women who are looking for abortion, this amendment is of no help. It is absolutely useless and unlikely to cause a dent on the maternal morality as a result of unsafe and unsure abortions. Even when compared to the draft MTP Amendment Bill, 2014, developed after

³VS Chandrashekhar: Are we truly advancing women rights, The Pioneer (10th may,2020)
<https://www.dailypioneer.com/2020/columnists/are-we-truly-advancing-women---s-rights-.html>

wide ranging consultation with a number of experts and stakeholders, the proposed amendments seem inadequate.

- **EFFECT ON WOMEN -**

When speaking about abortion, we shall not ignore the fact that the mother's health is also the one which will be compromised. For any legislation or a policy to be marked as productive, it is necessary that a huge majority of the target audience accepts and abides by it for whom such policy has been built up. Such policy should be capable of serving its purpose to the people as it promises. However, in this case, the amendments in the MTP Act have failed miserably in serving its purpose. Majority of the women do not benefit from the act and even if a small number of women might have been benefited, the act does not justify their causes.

Many countries, whether developed or not, has a lot more liberal thoughts and rules towards abortion. Our women for a very long time have been suffering from the different notions and gloomy outlook of the society which has always deprived them of their basic amenities and rights. Given the advances in medical technology, it is an opportune time for our country to make the MTP Act fully women-centric through its development and making major changes. Women's health and rights both in general and with regard to abortion particularly, is under immense threat. It is a great juncture for India to step up and take up an initiative in this supreme global agenda and be one of the great influencers.

This would require the Government to review what is proposed and overhaul the amendments, so that a contemporary MTP Act, which serves the needs of women and advances their rights, is tabled in the Parliament. If this opportunity is not grabbed, we will be failing 50 percent of our population. Critics say amendment does not go far enough. Their principal concern is absence of scale in the provider base. The amendment is suitably large allowing for the inclusion of changes as the dialogue frames its parameters. Framing is key in public health. Frames decide what is at stake, who is responsible and where solutions can come from. Gender justice, reproductive health, maternal health and a woman's right to her body are issues that need special attention because what is at stake is not just the welfare of women but also that of entire societies.

It is estimated by the WHO (1994) that within the Indian subcontinent 15-24 unsafe abortions happen per 1000 women aged 15-49 years. It is estimated (WHO, 1994) that in India 70-89

women per 100,000 live births die from unsafe abortion, the danger of death is 1 in 250 procedures. A study on illegal abortion in rural areas, conducted by the Indian Council of Medical Research (ICMR) revealed that the extent of illegal abortion (13.5 per 1,000 pregnancies) as compared with legal abortion (6.1 per 1,000 pregnancies) was still quite high and therefore the trend within the past 17 years (1972-1989) couldn't show a bent for illegal abortion to say no (ICMR, 1989).⁴ Abortion laws essentially matter to ending a life and there will always be a debate in accordance to the perceptions and thoughts. There is no way that everyone will have an equal mindset. However, it must be more concerned about the main priority i.e., the women and her health. Of course, ending a life is a major decision, but it is fair enough if the life is aborted when the parent or the guardian is incapable of taking care of the life after bringing it to the world. A woman must always have a greater say in this matter as it is her body we are speaking about.

- **SECTION 313 – CAUSING MISCARRIAGE WITHOUT WOMEN’S CONSENT**

Section 313 of IPC reads as “one who commits the crime of causing miscarriage to any woman without that women’s consent, whether that woman is bearing a child or vice versa, will be given life imprisonment. Miscarriage of a child is both legal and illegal in the eyes of law. When abortion is caused by the doctor with women’s consent to protect a woman’s life, it’s legal in the eyes of law, because it is done with a good intention to protect a mother’s life.”⁽⁵⁾

Section 312 of Indian Penal Code reads as “Whoever deliberately forces any female to miscarry, shall, in the chance that such miscarriage is not caused in compliance with common decency to protect the women's life, be punished with the detainment of either for a term which may be extended to 3 years, or with fine, or with both; and, in the event that the lady is bearing the child, will be punished with the detainment of either for a term which may be extended to 7 years and shall be liable to fine.” Actually, this Section explains that when a woman or someone else causes miscarriage to women either to save her life with a good intention.⁽⁶⁾

⁴MTP act 1971, Ministry of Health Affair (10th may,2020),<http://www.legalservicesindia.com/articles/pregact.htm>

⁵ Indian Penal Code, Section 313

⁶ Law of Crimes book by Ratanlal and Dhirajlal (23rd edition, page number 1234 to 1237).

In the case of Niketa Mehta Vs State of Mumbai, Niketa approached the Mumbai court to terminate the pregnancy in the 23rd week, but under MPT Act, it was legal to terminate the pregnancy till 20th week and later it is illegal to do so. As the doctor came to know about the complications in foetus during the 23rd week and so she wanted to go for abortion. She wanted to terminate the pregnancy because there was a possibility of a child with serious debility or miscarriage of pregnancy. ⁽⁷⁾As she didn't want a child with severe disabilities and to witness these disabilities, she approached the Mumbai court for relief. Mumbai court rejected her plea and she didn't have a favourable judgment. After this judgment, the government was forced to reconsider the laws on abortion in India. ⁽⁸⁾Other cases related to abortion in India are Mrs. X vs. Union of India, Taxpays Umesha Pisal vs. Union of India, Meera Santosh Pal vs. Union of India. ⁽⁹⁾In all these cases different sections of the MPT Act, 1971 were challenged.

- **CONCLUSION & SUGGESTION**

An overall look at this paper can give you a zest of how the pillars of the MTP Act were supposed to support the livelihood of this delicate issue. However, it hasn't even been able to achieve 50% of what was promised by the authority and the system. We are not only speaking about voluntary termination but also the involuntary ones. A major percentage shows that women had to terminate their pregnancy out of pressure from family or from the gender-based issues. Living in this modernized society, we hardly can claim that it is developing. We lack the basic essence of humanity a lot of times. The questions that initiated this paper still have some unanswered sections as the MTP Act does not satisfy the current need of the situation. However, to some extent it can be said that such an act is a good and a positive step towards the issues of termination of pregnancy.

⁷ Kilpady N. CNN/IBN. Abortion debate: Bombay HC verdict today. IBNlive.com. 2008 Aug [cited 2008 Sep 30]. (<https://www.news18.com/videos/india/abortion-new-294105.html>).

⁸Neha Madhiwalla, Indian Journal on Medical Ethics-The Niketa Mehta case: does the right to abortion threaten disability rights? Volume 5 , No 4 (2008) (<https://doi.org/10.20529/IJME.2008.055>).

⁹Abortion jurisprudence in the Supreme Court of India: Is it the woman's choice at all, Centre for Law and Policy research (FEBRUARY 8, 2019)(<https://clpr.org.in/blog/abortion-jurisprudence-in-the-supreme-court-of-india-is-it-the-womans-choice-at-all/>).

Law has undergone a drastic change, as we can see in the MPT Act, 1971, the act was made only for the Married women and nothing was mentioned about the women who were carrying child in their womb without their actual intention to have that child. This may happen due to cases like rape, defective contraceptive etc. From 1971 to 2020 we have drastic change in perspective of law as well as those people who make these laws. Now this here are laws which supports both married as well as unmarried women

It is very necessary for us to eliminate the binding root of backwardness when it comes to the woman and her child. Not only amendments but also a step forward by every person living in the society can be an immense help. What we require is a fast and a fair judgement and provisions for the improvement of the MTP Act and only then it will be able achieve the goals and provide its sources. A major change in the thought process is required in the first place. A birth of a child is no joke and it requires more focus on the decision of it coming into life. One of the major focuses should be on the fact that how much of the power does a woman have on her own body and decisions related to that. The government along with a developed society can increase the height of women upliftment both physically and emotionally.

