

RGICS

RAJIV GANDHI INSTITUTE FOR CONTEMPORARY STUDIES
JAWAHAR BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI-110001

RGICS LEGISLATIVE BRIEF (March 01, 2017)

**The Medical Termination Pregnancy
(Amendment) Bill, 2014**

KEY MESSAGES

- a. Several instances where individuals had to seek the permission of the Court for allowing permission in the 24th week of pregnancy
- b. Major amendments such as increase in gestation period, allowing unmarried women to avail abortion has been included
- c. It is important to monitor abortions to prevent sex selective abortions
- d. Counseling and awareness of abortions are necessary for Indian women

PART I. INTRODUCTION

The issue of abortion has always been a contested one dividing people into pro-life and pro women's rights camps. It has been much debated across the world, especially in the context of autonomy of women over their bodies. India was one of the first countries to launch a family planning programme in 1952 and also make the process of abortion legal. Though abortion is legal in India, several amendments have been suggested in the existing Medical Termination of Pregnancy Act, 1971 for quite some time. Several instances have urged the government to increase the gestation period and to permit abortion rights to women irrespective of their marital status. The Supreme Court on 25th July 2016 granted permission to a rape victim to abort her 24 year old foetus grounds that continuation of pregnancy that it would cause harm to both her physical and mental health. The victim identified in her petition as Miss X obtained relief under an exception in section 5 of the Medical Termination of Pregnancy Act, 1971, which allows abortion after the permissible 20 weeks in case it "is immediately necessary to save the life of the pregnant woman".¹ Similarly another case the Delhi High Court intervened and directed medical examination for fitness for abortion to a 16 year old girl who was sexually abused by her kidnappers for two years and finally abandoned by them at the Delhi University campus. In this case the court suggested a panel from AIIMS to be constituted and the foetus can be aborted provided the girl's life is not endangered². In 2016, a 14 year old rape victim from Gujarat had appealed and been granted permission by the Supreme Court for abortion, though the 20 weeks gestation period had been crossed.³ Even more recently a woman from Dombivali was allowed to undergo abortion in her 24th week by the Supreme Court because her foetus had developed abnormalities (The Hindu, 2017). These judgments and the fact that the cases reached the Supreme Court and the High Court raises significant questions and urges us to take a closer look at the existing Medical Termination Pregnancy Act, 1971 and also understand where we as a nation stand in terms of law making and morality in the process of recognizing the conditions of rape victims in India. The brief will also analyze and highlight the various implications of the amendments being suggested by the medical community.

¹ <http://indianexpress.com/article/explained/abortion-law-rape-victim-terminate-pregnancy-supreme-court-20-weeks-pregnant-2935481/> Date Accessed: 9.8.2016

² <http://www.thehindu.com/opinion/lead/a-tricky-debate-on-abortion/article8934071.ece> Date Accessed 9.8.2016

³ <http://www.livemint.com/Opinion/q9WenNvGVVnCWoTNeLskSP/Late-abortion-is-not-murder.html> Date Accessed: 9.8.2016

PART II: MEDICAL TERMINATION OF PREGNANCY ACT, 1971

In India, unlike the West, the enactment of the Medical Termination of Pregnancy Act, 1971 ensured that the process of legalizing abortion has been fairly smooth. The Medical Termination of Pregnancy Act, 1971 which was the first step in India to legalize abortion citing health and family planning concerns laid down several provisions. An understanding of the Act highlights the following:

- Registered medical practitioners with training in gynecology and obstetrics can terminate pregnancies under the prescribed conditions⁴⁴:
 - When the length of the pregnancy does not exceed 12 weeks
 - When the length of the pregnancy exceeds 12 weeks and not 20 weeks and the abortion can be conducted, after two medical practitioners are of the same opinion that the continuation of the pregnancy would risk the mother's life or the child to be born would incur severe mental and physical disabilities
 - Only married women in case of failure of contraception can avail of abortion

The Act explains that the mental health of the woman will be considered in the case of a rape victim or by the failure of any device which has resulted in the unwanted pregnancy. The Act not only legalizes abortion but also specifies circumstances and methods to regulate abortion. The Act was amended for the first time in 2002 and the responsibility of the approval of the MTP facility was shifted from the State to the district level to prevent delay in approval of the service delivery points. The existing Act has been criticized on several occasions because the Act has no provisions to make abortion facilities accessible for rural women. Additionally the Act allows married women to avail abortion, thus restricting the rights and choices of unmarried women. Given these criticisms and restrictions the next sections focuses on the proposed amendments for the MTP Act.

⁴ <http://www.thehindu.com/todays-paper/high-court-rejects-niketas-plea-to-terminate-pregnancy/article1308624.ece> Date Accessed: 10.8.2016

PART III. THE MEDICAL TERMINATION OF PREGNANCY **[AMENDMENTS] BILL 2014**

As discussed above abortion is legal within certain parameters in India, which makes those outside the legal purview to seek out abortion services from uncertified clinics and quacks. The existing MTP Act, 1971 has been a part of various debates and discourse and has garnered criticism from several corners, ranging from public health experts, activists and human rights organizations. In particular the debate garnered a lot of attention nine years back when Harish and Niketa Mehta had petitioned the Mumbai High Court to allow them to abort their 26 week old fetus which had been diagnosed with heart defects. However the plea of the Mehtas was turned down on expert advice.⁵ Nonetheless it was observed that only the Court could arbitrate and determine the legal limit of abortion, and that the re-evaluation of the MTP Act, 1971 was required. The amendments proposed under this Bill (made public on October 2014) attempts to address some of the major gaps which are important for the rights and choice of women.

- The proposed Bill recognizes the shortage of medical practitioners and grants permission to Ayurveda, Unani and Sidha (AYUSH) to conduct abortions through medical means.
- Relying on advanced technology the Bill has allowed abortions to be conducted even in the third semester and increased the time period from 20 to 24 weeks.
- The section of penalties and offences in the existing Act of 1971 has been increased which seeks to regulate the service providers, conditions of abortion and health of the women.
- A woman irrespective of her marital status (married/single) should be given the choice for abortion in case of failure of contraception.

While it remains to be seen if these amendments will be incorporated in the upcoming session, a discussion on the implications of these recommendations is important.

⁵ <http://www.thehindu.com/todays-paper/high-court-rejects-niketas-plea-to-terminate-pregnancy/article1308624.ece> Date Accessed: 10.8.2016

PART IV. IMPLICATIONS OF THE AMENDMENTS

Abortion is viewed as a complex procedure because it involves ethical and moral dilemmas with religious dimensions in all countries. Though it is an issue of human rights it perpetually gets combined with cultural attitudes and lack of family support. While certain amendments have been suggested, however it is important to note and understand the various consequences that the modified law will have on the lives of individuals and their families. The various amendments suggested do not take into consideration a number of concerns.

First though the recommended amendments make the process of access to abortion service providers easier, however the choice of the woman is not included. The women can undergo abortion, provided the medical practitioner gives his/her approval. In particular even though more health service providers have been granted permission for termination of pregnancies, their experiences, training and background have not been indicated in the amendments.

Second legal and medical experts suggest that a change in the legal limit of abortion is long pending and requires immediate attention. Fetal abnormalities show up only after 18 weeks and hence a two week notice would be too short for parents to decide whether they wish to keep the baby or not. Even for the medical practitioner it is a very short time to advise parents regarding this extreme step. In addition with an increase in the time gap and advanced technology, there is also a chance of increasing sex selective abortions. Hence while the time gap has been increased a closer monitoring of the reasons behind abortion should be administered. This monitoring is particularly important because the lack of legal approval does not prevent abortions; instead it increases the risks of unsafe abortions which take place in unhygienic conditions conducted by unauthorized health practitioners.

Finally it is also important to note that while one of the amendments increases the gestation period of abortion, no measures regarding post abortion care is being considered. Several complications often crop up after abortion has been conducted and provisions should be made to take these complications into account. Specifically it also enables parents to terminate a pregnancy in case the child is diagnosed with disabilities. This again brings up the raises the question of whether a child with disabilities should be allowed to be born or not? In the case of Suchitra Srivastava (2009) who was a mentally retarded rape victim in a protection home of Chandigarh was denied the right to abortion as it would further affect her mental health. Even though the larger question was who would look after the child, the Court did not grant permission for termination.⁶

⁶ <https://lawandotherthings.blogspot.in/2009/07/suchitra-srivastava-v-chandigarh-admn.html> Date Accessed: 10.8.2016

PART V. CONCLUSION

Since the major debate surrounding abortion is life versus life, it is important to understand if a middle path can be designed and followed to protect the right of the woman as well as the right of the foetus to survive. The only difference is that the foetus cannot exercise an option, while the mother can. Nonetheless what needs to be stressed and emphasized upon is that rape victims should be allowed to terminate their pregnancies and not have to seek the Courts permission for their rights. However in the larger perspective, the Bill also needs to take into consideration the various taboos associated with abortion in India. Abortions are not discussed openly specially by women with their family members. Rarely do women discuss concerns surrounding abortion. The major reason being the lack of family support and guilt that women receive because of abortion that it continues to remain a prohibited topic. However in the case of rape victims, the family would be keen for an abortion, thus highlighting the paradoxical nature of decision making regarding abortion. It is important to note that rape victims in India should be given priority and they should not have to go to court to seek special status. In this case it needs to be noted that while the amendments make provisions for later abortions and with better medical access, however the notions surrounding abortions are hardly dealt with. In Germany the law permits abortion post counseling and a three day waiting period. Instead of making abortion a criminal offence the law in Germany focuses on financial securities, health concerns, family support and wellbeing of both the mother and the unborn child⁷.

In India counseling of women and their family members who wish to undertake abortion should be mandatory as it will provide them with the opportunity to know more about the process, the laws in India regarding abortion and also they will become more aware of their health concerns. Hence it is not sufficient to have a law that to just have a law which liberalizes abortion, it is also necessary that there is adequate focus on counseling and post abortion trauma, for a safer and healthier India. It is important for the government to spread more awareness regarding the advantages, disadvantages and the norms surrounding the abortion laws in the country. Awareness coupled with counseling will help women to make better and informed choices.

⁷ <http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml> Date Accessed: 10.8.2016

PART VI. BACKGROUND INFORMATION/REFERENCE DOCUMENTS

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