

## Legal Aspect of Abortion for Health Care Professionals

Brijendra Singh Tomar\*

\*Department of Agadtantra, S. K. Government Ayurvedic College, Kurukshetra, Haryana, India

### Abstract

The World Health Organization (WHO) estimates that worldwide 210 million women become pregnant each year and that about two-thirds of them, or approximately 130 million, deliver live infants<sup>1</sup>. The remaining one-third of pregnancies end in miscarriage, stillbirth, or induced abortion<sup>1</sup>. Of the estimated 42 million induced abortions each year, nearly 20 million are performed in unsafe conditions and/or by unskilled providers and result in the deaths of an estimated 47,000 girls and women<sup>1</sup>. This represents about 13 percent of all pregnancy-related deaths<sup>1</sup>. While the incidence of abortion in India is unknown, the most widely cited figure suggests that around 6.7 million abortions take place annually. According to government data, only about one million of these are performed legally. The remaining abortions are performed by medical and non-medical practitioners. Levels of unsafe abortions are very high in India, especially given that abortion is legal for a broad range of indications, and available in the public and private health sector. Therefore an attempt is made to make aware the health care professionals about the various provisions of laws related to abortion so that they can play a major role to aware society.

### Keywords

*Abortion, Miscarriage, Legal, Stillbirth*



**Greentree Group**

Received 04/09/15 Accepted 07/10/15 Published 10/11/15

## INTRODUCTION

Legally abortion or miscarriage means the spontaneous or induced termination of pregnancy before the foetus is independently viable, which is usually taken as occurring after the 28<sup>th</sup> week of conception<sup>2</sup>. Medically, abortion means the expulsion of the ovum or foetus within the first three months of pregnancy; miscarriage, the expulsion of foetus from 4<sup>th</sup> to 7<sup>th</sup> month; and premature delivery, the delivery of a baby after 7<sup>th</sup> months of pregnancy and before full term. Legally miscarriage, abortion and premature labour are now accepted as synonymous term, indicating any termination of pregnancy at any stage before confinement<sup>2</sup>.

### Classification of abortion

Abortion may be classified as natural (spontaneous) and induced (artificial).

*Natural abortion*-The incidence of natural abortion is 10-15% of all pregnancies approximately<sup>3</sup> and most of them occur in first trimester due to the slight attachment of the ovum to the uterine wall. These occur without any induction procedures and usually coincide with menstrual flow. The causes of natural abortion may be genetic, anatomical, endocrine, infection, immunological etc.

*Induced abortion*- It is of two types justifiable or therapeutic and criminal. Abortion is justifiable only when it is done in good faith to save the life of woman, if it is materially endangered by the continuance of pregnancy and performed within the legal provisions of Medical Termination of Pregnancy act 1971. The World Medical Association adopted a resolution on therapeutic abortion, known as Declaration of Oslo (1970). Criminal abortion is the induced destruction and expulsion of the foetus from womb of the mother unlawfully. It is usually resorted by widows and unmarried woman. It is usually carried out before the third month.

## MEDICAL TERMINATION OF PREGNANCY ACT (MTP ACT) 1971

### When pregnancies may be terminated by registered medical practitioners<sup>4</sup>?

A pregnancy may be terminated by a registered medical practitioner-

- (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 physical or mental health; or

(ii) There is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation 1: Where any, pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2: Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

(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.

(b) No pregnancy shall be terminated except with the consent of the pregnant woman.

### **Place where pregnancy may be terminated<sup>4</sup>**

No termination of pregnancy shall be made in accordance with this Act at any place other than

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee :

Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

### **Composition and tenure of district level committee**

One member of the district level committee shall be the gynecologist/surgeon/anesthetist and other member from the local medical profession, non-government organization and *PanchayatiRaj* institution of the district. Provided that one of the members of the committee shall be a woman.

Tenure of the committee shall be for two calendar years and the tenure of the non-government member shall not be more than two term.

### **Experience and training of doctor conducting abortion<sup>4</sup>**

A registered medical practitioner shall have one of the following experience or training in gynecology and obstetrics namely-

- a) In case of medical practitioner, who was registered in a state medical register immediately before the commencement of act, experience in the practice of gynecology and obstetrics for a period of not less than 3 years.
- b) In case of medical practitioner, who is registered in a state medical register; if he has completed six months of house surgery in gynecology and obstetrics or he had experience at any hospital for a period of not less than one year in the practice of gynecology and obstetrics.
- c) If he has assisted a registered medical practitioner in the performance of 25 cases of medical termination of pregnancy of which at least 5 have been performed independently in a hospital approved for this purpose by the government. This training would enable the

registered medical practitioner to do only 1<sup>st</sup> trimester termination (upto 12 weeks of gestation). For termination of upto 20 weeks the experience or training as prescribed under sub-rules (a), (b), and (d) shall apply.

- d) In case of medical practitioner who has been registered in a state medical register and who hold a post graduate or diploma in gynecology and obstetrics, the experience or training gained during the course of such degree or diploma.

### **CRIMINAL ABORTION**

Any abortion which violates the provisions of MTP act 1971, although performed by qualified doctors, comes under criminal abortion and attracts the Indian Penal Code sections 312 to 316.

**Section 312 of IPC-** whoever voluntarily causes to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine<sup>5</sup>.

**Section 313 of IPC-** whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine<sup>5</sup>.

**Section 314 of IPC-** whoever with the intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term may extend to ten years and shall also be liable to fine. If act done without woman's consent, shall be punished either with imprisonment for life or with imprisonment above ten years<sup>5</sup>.

**Section 315 of IPC-** whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such prevent that child from being born alive, or to causes it to die after its birth, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both<sup>5</sup>.

**Section 316 of IPC-** whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act causes the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine<sup>5</sup>.

#### **Duty of doctor in suspected criminal abortion**

- a) The doctor's duty is to guard all the information obtained by him as a professional secret.
- b) He must urge the patient to make statement about the induction of criminal abortion. If she refuses to make statement, he should not pursue the matter, but inform the police.
- c) If the condition of woman is serious, he must arrange to record the dying declaration.
- d) If the woman dies, he should not issue a death certificate, but inform the police for making arrangement of postmortem examination.

## **CONCLUSION**

In order to save the rights of an unborn child the compliance of MTP Act 1971 and Pre-Natal Diagnostic Techniques Act 1994 is very necessary. In the population census of 2011 it was revealed that sex ratio in India is 940 females per 1000 of males<sup>6</sup>. And this difference is because in many parts of India, daughters are not preferred and hence sex selective abortion is commonly practiced, resulting in an unnatural male to female population sex ratio due to millions of developing girls being terminated before birth. The ultimate aim of these MTP act amendments (2002) are-

To eliminate the incidence and prevalence of abortions by: Untrained persons (quacks); and in Unsafe & unhygienic conditions, so that reduction in the 'maternal mortality & morbidity' could be achieved and crime of 'female feticide' dealt effectively. So we as a health care provider shall be well versed in the law related to abortion to avoid any violation of MTP act.

## REFERENCES

1 World Health Organization (WHO), Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2003, 5th ed. (2007).

2 Modi.P.Jaising,23<sup>rd</sup> edition, A textbook of medical Jurisprudence & toxicology, Edited by Dr K Mathiharan and Prof Dr Amrit K Patnaik, 2008;(1013-1045)

3 Biswas Gautam, 2<sup>nd</sup> edition, Review of forensic medicine & toxicology, Jaypee brothers medical publishers (P) Ltd, New Delhi , 2012; 299-305

4 The Medical Termination of Pregnancy Act, 1971.

5 [www.indianpenalcode.blogspot.com](http://www.indianpenalcode.blogspot.com)

6 [www.census2011.co.in/sexratio](http://www.census2011.co.in/sexratio)

medicine & toxicology,CBS Publishers & Distributors, New Delhi, 2000; 5.56

4. The Indian Penal Code, 1860, section 312, 313, 314, 315, 316.

5. The Medical Termination of Pregnancy (Amendment) Act, 2002.

6. The Medical Termination of Pregnancy (Rules), 1972.

7. The Medical Termination of Pregnancy (Amendment) Rules, 1975.

8. The Medical Termination of Pregnancy (Amendment) Rules, 1977.

9. The Medical Termination of Pregnancy (Amendment) Regulations, 1975.

10. The Medical Termination of Pregnancy (Regulations) 2003.

11. The Medical Termination of Pregnancy Rules, (Amendment) 2003.

12. The Mental Health Act, 1987.

## BIBLIOGRPAHY

1. Bardale Rajesh, First edition, Principle of forensic medicine & toxicology, Jaypee brothers medical publishers (P) Ltd, New Delhi , 2011; 345-351

2. Reddy.Dr.K.S.Narayan, 33<sup>rd</sup> edition, The Essential of forensic medicine & toxicology, Published by Jaypee brothers medical publisher ltd.2014; 400-410

3. Parikh Dr.C.K,6th edition, Parikh's Textbook of Medical Jurisprudence, forensic