

UGC Approved Journal No – 48728
(IIJIF) Impact Factor - 3.034

ISSN 2249 - 8893

Annals of Multi-Disciplinary Research
A Quarterly International *Peer Reviewed* Refereed Research Journal



Volume 8

Issue I

March 2018

Editor
Dr. Sarvesh Kumar
UPRTOU Allahabad

Chief Editor
Dr. R. P.S. Yadav
Incharge Director,
School of Humanities
UPRTOU Allahabad
www.annalsmdresearch.com

E-mail : annalsmdresearch@gmail.com

www.annalsmdresearch.com

- **Emotional Intelligence as a Function of Psychological Traits** **39-42**
Dr. Rupashree Jamuar, Associate Professor & Head, Dept. of Psychology, R.N. College, Hazipur (Vaishali)
- **A Cross Cultural Study of Personality Traits of Students** **43-46**
Dr. Pratibha Kumari, Res.: 404, Lekhraj Parisar, Road No.-3, East Patel Nagar, Patna-23
- **Management of Stress between University Teachers and Bureaucrats in Context of Nature of Profession and Spouse** **47-49**
Dr. Vinay Kumar, Assistant Professor & Head, Dept. of Psychology, M.K.S. College, Trimuhan, Chandauna, Darbhanga, Pin Code - 847303
- **Micro insurance: A New Paradigm of Social Security** **50-53**
Mrs. Shivangi Sah, Research Scholar, Faculty of Commerce, BHU, Varanasi
- **Analysis of Socio- Economic Sector & Future prospect of Development: A Case Study of City Block Mirzapur U.P.** **54-56**
Dr. Shyam Lata Devi, Associate Professor, Department of Geography, K.B.P.G College, Mirzapur, Uttar Pradesh.
- **Institutional Assessment as a Tool of Quality Augmentation in Teacher Education: Probabilities and Challenges in Adoption** **57-61**
Fozia Roohi, Research Scholar , J.M.I. New Delhi.
- **A Review of Existing Literature on the Self Confidence Development of Players** **62-67**
Vishal Singh Sengar, Research Scholar, School of Physical Education, DAVV, Indore (M.P.)
Prof. (Dr.) S.K. Yadav, Professor, School of Physical Education, DAVV, Indore (M.P.)
- **Comparative Analysis of Selected Physiological and Psychological variable among national level Basketball, Volleyball, & Football Player** **68-73**
Vijay Kumar Maurya, Researcher (Faculty of Physical Education) Shri Gandhi P.G. College, Maltari Azamgarh
Dr. Prashant Rai, Research Guide (Faculty of Physical Education) Shri Gandhi P.G. College, Maltari Azamgarh
- **Measures To Strengthen The Indian Administration** **74-78**
Dr. Deepika Agrawal, Associate Professor, Department of political Science, Satyawati college (eve), University of Delhi
- **Critical Analysis of Abortion Related Laws in India with Special Reference to Medical Termination of Pregnancy Act, 1971** **79-83**
Sudhanshu Shekhar Bisen, LLB - BHU, LLM- MGKVP, Varanasi. PhD- Pursuing from CMP Degree College (Allahabad University).

Critical Analysis of Abortion Related Laws in India with Special Reference to Medical Termination of Pregnancy Act, 1971

*Sudhanshu Shekhar Bisen**

Introduction : Women have been blessed by nature to be able to give life to a new being. As much as it is a boon, it comes with its share of banes associated with it. Especially in the Indian context, the birth of a child can be as much an occasion for celebration as much as it can be for mourning. And the decisive factor here is the gender of the child.

Certain parts of our society are still in the shackles of an orthodox patriarchy which looks at girls as a burden. As a consequence, few decades back as soon as the gender of the child in the womb was revealed as a girl, the fetus was killed. This led to a huge increase in the cases of female feticide. This not only resulted in a decline in the female population but also risked the life of the woman carrying the child. Thus, to regulate such cases, laws were needed to be in place. The two most important laws relevant to this concern are The Medical Termination of Pregnancy Act, 1971 and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

Legal Scenario : Before 1972, abortion was an offence punishable under the Indian Penal code and was permitted only when it was needed to save the life of the mother. This law because of the restriction imposed and the strictness led to its violation in numerous cases. The huge uproar and the demand for liberalization for a number of years led to the formation of Medical Termination of Pregnancy Act in the year 1972. When an unborn is in mother's womb, it is necessary to understand here that it is a part of a woman's body, and if a lady does not have a right over her own body then it is a complete infringement of right to life and personal liberty guaranteed by the state under article 21 of the Indian Constitution.

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 majority of countries have very restricted abortion laws, 41% of women live in countries where abortion is available on request of women. In India, Shantilal Shah Committee (1964) recommended liberalization of abortion law in 1966 to reduce maternal morbidity and mortality associated with 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. 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 make services more readily available. The MTP Act, 1971 preamble states" an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto".

The preamble is very clear in stating that termination of pregnancy would be permitted in certain cases. The cases in which the termination is permitted are elaborated in the Act itself. Moreover, only a registered medical practitioner who is defined in Sec.2(d) of the Act is permitted to conduct the termination of pregnancy. Also other matters connected

* LLB - BHU, LLM- MGKVP, Varanasi. PhD- Pursuing from CMP Degree College (Allahabad University).

there with the incidental thereto are incorporated, for example, the question of consent of termination of pregnancy, the place where the pregnancy could be terminated, the power to make rules and regulations in this behalf.

Grounds for termination of pregnancy : Sec.3 provides that "When pregnancies may be terminated by registered medical practitioner.

- (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".

This makes it clear that the provisions of the MTP Act, so far as abortion is concerned suppresses the provisions of the Indian Penal Code.

Sub-sec. (2) of Sec.3 further provides that "Subject to the provisions of sub-sec (4), a pregnancy, may be terminated by a registered medical practitioner -

- (a) Where the length of the pregnancy does not exceed 12 weeks if such medical practitioner is, or
- (b) Where the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks, if not less than 2 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 women or of grave injury to the her physical or mental health ;or
 - (ii) There exist a substantial risk that, if the child were born it would suffer from some physical or mental abnormalities so as to be seriously handicapped;

The Act does not permit termination of pregnancy after 20 weeks. The medical opinion must of course be given in "good faith"ⁱⁱⁱ. It is important to note that certain loopholes exist in the provisions. Firstly, nowhere has the Act defined what would involve a risk or a grave injury to her mental health. The term grave injury or substantial risk remains undefined. The gravity of the injury or the extent of the risk being left to the interpretation of the clause by the medical practitioner. However , the MTP Act provides some guidance for the doctors in the form of two explanations.

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.

Therefore, rape per se is not an indication. It is the mental anguish following pregnancy due to rape, which is the main indication. In other words, mental anguish is to be taken into consideration; proving rape and affecting her character is not necessary. Her allegation that she has been raped is sufficient. Further proof of rape like medical examination, trial, judgment is not necessary.

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 purpose of limiting the number of children they anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

The Act says that mental anguish due to pregnancy due to contraceptive failure in a married woman is an indication. Can an unmarried woman avail of this clause? She cannot use this, but she can get abortion under the general clause of mental indication.

Sub Section (3) clarifies that in determining that whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-sec (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment.

Therefore, in determining whether the continuation of pregnancy would constitute a risk to the physical or mental health of the pregnant woman the Indian Law permits the consideration of the woman actual or reasonably foreseeable environment. The terms reasonably or foreseeable being left to the interpretation of the medical practitioner. Environmental clauses could include, by interpretation, drunkard husband, low-income group, large family etc.

By and large, these explanations provide for two instances where continued pregnancy is assumed to constitute a grave injury to the mental health of the pregnant woman, namely where the pregnancy is alleged by a woman to have being caused by rape and second where the pregnancy occurs as a result of failure of any device by a married woman or her husband for purpose of limiting the number of children. The provision provides the doctors with a yardstick for a broad interpretation of the basic concept of the potential injury to the mental health of the pregnant woman.

The MTP (Amendment) Bill, 2014 : The MTP (Amendment) Bill of 2014 proposes to replace 'registered medical practitioners' with 'registered healthcare providers'. More importantly, it aims to extend the permissible period for abortion from 20 weeks to 24 weeks if the healthcare provider believes the pregnancy involves a substantial risk to the mother or the child. If substantial foetal abnormalities are detected, the amendment also allows an exception on the time limit for pregnancies to be terminated. However, these amendments are being passed back and forth without any effective action, forcing pregnant women seeking abortion to run to courts. The amendment still also needs cabinet approval, after which the Bill will be tabled in parliament.

Contribution From the Judiciary : The judiciary has at times been progressive, pronouncing judgments that support reproductive rights. But at times, the courts have succumbed to the old 1971 law as well. The Supreme Court has held that a crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. Even the term 'mental injury' has been given wider interpretation by the courts. On the right to abortion, the US Supreme Courtⁱⁱⁱ has held that it is the woman who suffers and thus she has the right to make the decisions. Its Indian counterpart allowed an alleged rape victim to abort a 24-week old foetus with severe abnormalities in January 2017, as the medical board thought that the pregnancy could put her life in danger. Decisions made by courts therefore have not always been on an even footing, thereby necessitating changes to the existing law.^{iv} In the case of *D. Rajeswari vs State Of Tamil Nadu And Others*^v, an unmarried girl of 18 years old prayed for issue of a direction to terminate the pregnancy of the child in her womb, on the ground that bearing the unwanted pregnancy of the child of three months made her to become mentally ill and the continuance of pregnancy has caused great anguish in her mind, which would result in a grave injury to her mental health, since the pregnancy was caused by rape. The Court granted the permission to terminate the pregnancy.

In *Dr. Nisha Malviya and Anr. Vs. State of M.P*^{vi}, the accused had committed rape on minor girl aged about 12 years and made her pregnant. The allegations are that two other co-accused took this girl, and they terminated her pregnancy. So the charge on them is firstly causing miscarriage without consent of girl. The Court held all the three accused guilty of termination of pregnancy which was not consented by the mother or the girl.

In *Murari Mohan Koley vs The State*^{vii}, a woman wanted to have abortion on the ground that she has a 6 months old daughter. She approached the petitioner for an abortion. And the petitioner agreed to it for a consideration. But somehow the condition of the woman worsened in the hospital and she was shifted to another hospital. But it resulted in her death.

The abortion was not done. The petitioner who was a registered medical practitioner had to establish that his action was done in good faith (includes omission as well) so that he can get exemption from any criminal liability under section 3 of the MTP Act, 1971.

In the case of *Shri Bhagwan Katariya And Others vs State of M.P.*^{viii}, the woman was married to one Mr. Navneet. Applicants are younger brothers of said Navneet while Bhagwan Katariya was the father of said Navneet. After the complainant conceived pregnancy, the husband and the other family members took an exception to it, took her for abortion and without her consent got the abortion done.

The Court opined that if we refer Section 3 of the Medical Termination of Pregnancy Act, 1971, a doctor is entitled to terminate the pregnancy under particular circumstances and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that without the consent of the woman it could not be done. Present is a case where a permanent scar has been carved on the heart and soul of the woman by depriving her of her child. And the Doctor will be liable.

Thus, the case laws show that a woman has an absolute right to abortion and no one can take away this right from her. The Judiciary has been playing a vital role in securing these rights to women. Right to abortion is a fundamental right of privacy.

Suggestions & Conclusion : Women have been blessed by nature to be able to give life to a new being. As much as it is a boon, it comes with its share of banes associated with it. Especially in the Indian context, the birth of a child can be as much an occasion for celebration as much as it can be for mourning. And the decisive factor here is the gender of the child. Certain parts of our society are still in the shackles of an orthodox patriarchy which looks at girls as a burden. As a consequence, few decades back as soon as the gender of the child in the womb was revealed as a girl, the fetus was killed. This led to a huge increase in the cases of female feticide. This not only resulted in a decline in the female population but also risked the life of the woman carrying the child.

Thus, to regulate such cases, laws were needed to be in place. The two most important laws relevant to this concern are The Medical Termination of Pregnancy Act, 1971 and the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. The present paper shall look into details the very reasons and background which led to the enactment of these laws. Further, the key provisions shall be elaborated upon along with an analysis of the pertinent case laws.

Reference :

ⁱ. Sec.2(d)- A medical practitioner who possess any recognize medical qualification as defined in Cl.(h) of sec.2 of the Indian Medical Register and who has such experience or training in gynaecology and Obstetrics as may be prescribed by rules made under this Act.

ⁱⁱ. The term good faith has not been defined in the Act but sec. 52 if the IPC defines good faith to mean as act done with 'due care and caution'.

ⁱⁱⁱ. Roe v. Wade, 410 U.S. 113

^{iv}. <http://www.thehindu.com/news/national/SC-allows-rape-victim-to-abort-24-week-oldfoetus/article14508050.ece>

^v. 1996 CriLJ 3795

^{vi}. 2000 CriLJ 671

^{vii}. (2004) 3 CALLT 609

^{viii}. 2001 (4) MPHT 20

Books Referred:

- Richards P. Edward and Rathbun C. Katharine, Medical Care Law, 1999 edition, An Aspen Publications.
- Morgan Derek, Issues in Medical Law and Ethics, 2001 Edition, Cavendish Publishing Limited.
- Cox H.W.V., Medical Jurisprudence and Toxicology, 6th edition, 1998, The Law Book Co. (Pvt.) Ltd.

- 'Shaw S.P., Laws of Child in India, 2001 edition, Allia Law Agency.
- 'Goonesekere Savitri, Children Law and Justice, 2000 Edition, Allahabad Law agency.

Articles Referred:

- 'Davies A.C.L., "Don't Trust Me, I'm a Doctor: Medical Regulation and the 1999 NHS Reforms, Vol: 20, No.3, 2000, Oxford journal of Legal Studies.
- "Abortion and The Medical Termination of Pregnancy Act, 1971", Relevant Provisions of the Special Act, Pg.35, Symbiosis Center of Health Care.
- 'Deshmukh KK, Medical Termination of Pregnancy Act, 1971, Manual on Medical Termination of Pregnancy "An Update", 3rd edition, Pg: 8, FOGSI Publications.
- 'Chowdhury NN Roy, General Survey of Maternal Mortality, Morbidity, Complications and Sequelae of MTP, Manual on Medical Termination of Pregnancy "An Update", 3rd edition, Pg: 12, FOGSI Publications.
- 'Bhatt RV, social Implications of the MTP Act, Manual on Medical Termination of Pregnancy "An Update", 3rd edition, Pg: 25, FOGSI Publications.
- 'Mukherjee GG, Das H.S., 'Ethical issues in MTP", Manual on Medical Termination of Pregnancy "An Update", 3rd edition, Pg: 29, FOGSI Publications.
- 'Roa KA, role of Prenatal Diagnosis in MTP, Special Aspects of MTP, Manual on Medical Termination of Pregnancy "An Update", 3rd edition, Pg: 85, FOGSI Publications.

Internet Sources:

- www.expresshealthcaregmt.com/2003
- www.hsph.harvard.edu/organizations/healthnet/sAsia/repro/MTP act
- www.bhj.org/journal/2002
- www.indiatogether.org/2004/jan/wom-foeticide
- www.janmanch.org/development-law/developmentlaws.asp
- www.boloji.com/w/s/wfs 048
- www.indiatogether.org/women/violence/infanticide
