

RGICS



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

RGICS
LEGISLATIVE BRIEF
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The Medical Termination of Pregnancy
(Amendment) Bill, 2014

Jeet Singh
Social Cluster

The Medical Termination of Pregnancy (Amendment) Bill, 2014

KEY MESSAGES

- 1- The proposed Bill has neglected women's sexual and reproductive right, freedom, choice and dignity. The common practice of insisting on consent of women's husband/partner for abortion undermines their dignity and neglect rights. The proposed Bill has not addressed this fundamental issue.
- 2- The Bill was proposed in haste by Union ministry. Public, experts and other stakeholders were given very short time of 12 days to respond and suggest on the proposed Bill.
- 3- The proposed Bill is ignorant about ability, skill and training requirement of proposed new MTP service providers viz AYUSH practitioners, ANMs and Nurses.
- 4- The proposed Bill does not comply with the India's commitment as a signatory of International Conference on Population and Development (ICPD), 1994.

PART I. INTRODUCTION

Worldwide, 210 million women become pregnant every year, of which 42 million women faced with unwanted or unplanned pregnancy, terminate their pregnancy voluntarily. According to WHO data 20 million abortion (nearly half) are unsafe. Ninety five per cent of unsafe abortion takes place in developing countries.¹ In India, there is no data on unsafe abortion after 2002-03. Country director of Ipas, an international NGO working on increasing access to safe abortion services said, "Abortion deaths are under-reported." Quoting data from a research paper published in Lancet in 2007, he said there were 6.4 million abortions, of which 3.6 million or 56 per cent were unsafe. As per SRS data of 2001-03, abortion related death contribute to 8 per cent of all maternal death in India². As per the estimate of Ipas, unsafe abortions are killing a woman every two hours in this country. The Medical Termination of Pregnancy Act, 1971 regulates abortion largely to provide safe medical termination for married women under certain circumstances in India. However, number of factors including provisions of existing law forces women to opt for unsafe abortions.

People working in the field of women's sexual health rights argue that due to the absence of safe legal options, women opt for backroom procedures. Many times this can be fatal. Most of these women are poor, illiterate and belong to marginal communities such as Dalit, Adivasi and living in rural areas. The Institutional Facility Survey Report by IIPS in 2005 found that in terms of accessibility of safe abortion services in public health system where MTP (Medical Termination of Pregnancy) is available, only 73 per cent district hospitals in major states had this facility. Bihar, and UP with only 35 and 48.5 per cent district hospitals offering this facility, led with lowest access to such facilities. . On the percentage of health facilities with at least one doctor who received training during the last three years, the situation was grim with only 14.6 per cent in primary health centers being trained. Organization working on issues of population in India have been advocating for expanding base of legal service providers to enhance availability and accessibility of abortion services. A technical consultation of WHO in 2003 stated that "trained mid-level providers can perform manual vacuum aspiration (MVA) safely, and provide medical methods of abortion" and that doing so "can help ensure appropriate service availability and accessibility without compromising safety."³ A study conducted by Population Council in India in 2011

¹ http://www.chsj.org/uploads/1/0/2/1/10215849/healthrights_page_1.pdf, Accessed on 09/12/2014

² <http://www.thehindu.com/news/national/unsafe-abortions-killing-a-woman-every-two-hours/article4686897.ece>, Accessed on 08/12/2014

³ <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/the-alternatives/article5136361.ece>, Accessed on 08/12/2014

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concluded that Ayurveda physicians and nurse could provide medical abortion as safely and effectively as physicians with MBBS qualification⁴.

The termination of unwanted or unplanned pregnancy is not only about availability and accessibility of safe abortion services. It also has close association with the gender power relations that persists in our society where women have least opportunity to take the decision and negotiate her sexual and reproductive life. Women and health right activists have been arguing that the abortion law further maintains the imbalanced power relations. The restriction on abortion in exiting law and poor availability of abortion facilities increases women's vulnerability. Women organizations have been demanding amendments to the existing abortion law to ensure women's freedom, rights, choices and dignity.

Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy (MTP) Act provides legal validity to abortion in India under certain circumstances. The Act came into existence in 1971 based on the recommendations of the Shah Committee. It allows termination of pregnancy up to 20 weeks if-

- The pregnancy poses risk to the mother's life or can cause serious damage to her physical and mental health.
- There is substantial risk that the child, if born, would be seriously handicapped due to physical or mental abnormalities.
- The pregnancy was caused by rape
- The pregnancy was caused by failure of contraception in a married women or her husband

MTP Act, 1971 not only specifies circumstances for legal abortion but also regulates methods of abortion, service delivery points and service providers. Any abortion meeting these regulations is treated as safe abortion. The Act was amended for the first time in 2002 with an aim to facilitate better implementation and increase access for women especially in private health sector. Through amendment, responsibility of approval of MTP facility was shifted from the state to the district level in order to minimise delay in approval of service delivery points.

Even after legalizing termination of pregnancies in India, unsafe abortion continues. Women organization, civil societies, health right activists and human right organization have been demanding improvements in the law on a number of aspects ranging from increasing accessibility of MTP services to incorporate women's rights. In 2010 , the UPA-II government, realizing the concerns of stakeholders constituted an expert group committee consisting of a variety of stakeholders representing NGOs, academic institutions, state governments, Federation of Obstetric and Gynecological Societies of India (FOGSI), Society of Midwives India (SOMI) and lawyers to look into the matter of re-assessing existing law. The expert committee had submitted its recommendations to the then Ministry of Health and Family Welfare seeking some amendments in the MTP Act. The committee proposed following four broad amendments in the principal Act to increase availability of safe and legal abortion services for women in the country⁵.

- 1- **Expanding base of legal abortion providers-** In order to increase the availability of safe and legal abortion services, it has been recommended to increase the base of legal MTP providers by including medical practitioners with Bachelor's degree in Unani, Ayurveda or Homeopathy. The undergraduate training curriculum of these

⁴ <http://www.popcouncil.org/research/increasing-access-to-comprehensive-abortion-care-services-in-india>, Accessed on 09/12/2014

⁵ http://www.populationfirst.org/Common/Uploads/HomeTemplate/WNDoc_Proposed%20amendments%20to%20the%20MTP%20Act%20-%20summary%20note%20%281%29.pdf, Accessed on 08/12/2014

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categories of ISM practitioners includes abortion services. It has also been recommended to include nurses with a three and half year degree and registered with the Nursing Council of India, into the base of legal providers for medical methods of abortion only.

- 2- **Increasing access to legal abortion services for all women-** In order to enhance access to legal abortion services for women the expert group suggested following amendments.
 - Remove the requirement for provider's opinion for first trimester abortions.
 - Reduce the condition of requirement of the opinion of two service providers for second trimester pregnancies to one service provider only, as this is seen as a hindrance in access to safe abortion services by women in situations where two providers are not available.
 - Extend the indication of contraception failure to include unmarried women also.
 - Distinguish between training for medical and surgical methods of MTP. Since the training required to provide only medical methods of abortion is significantly less than surgical abortions, it has been recommended to distinguish between the two trainings. This would enable more providers to be appropriately trained, thereby ensuring safe MTP services.
- 3- **Increasing the upper gestation limit for legal MTPs-** This recommendation has been made keeping in mind the latest technological and medical advancements, which have made late abortions safer than before. It has been recommended to insert a sub-section which will allow termination of pregnancy where necessitated by the diagnosis of any of the substantial foetal abnormalities.
- 4- **Increasing clarity of the MTP law-** The expert group has recommended bringing more clarity in the MTP law by defining terms such as abortion, medical termination of pregnancy and methods of abortion. Addressing the common practice of insisting on consent of women's husband/partner, the group further recommended introducing a clause, which clearly states that only the consent of the woman is required for an MTP procedure.

Soon after formation of NDA government in May 2014, the Union Ministry of Health and Family Welfare resumed the task of bringing amendments in the MTP law. The ministry prepared a draft amendment Bill and posted it on their website to solicit the views/suggestion from the interested stakeholders and public on 29th October, 2014. Suggestion and inputs from public and other stakeholders on the proposed Bill were invited until 10th November 2014.

Responding to a question in Rajya Sabha, Union Health and Family Welfare Minister J.P. Nadda on 2nd December 2014 stated, "the draft Bill has been prepared following extensive deliberations within an Expert Committee of representatives from Central & State Government Ministries/Departments, academic institutions including Medical Colleges, professional bodies & associations, development partners, technical agencies, NGOs and civil society. Opinion from general public has also been invited⁶." However, the final draft of the Bill is not yet in the public domain.

⁶ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=112327>, Accessed on 08/12/2014

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PART II: KEY ISSUES

Legalizing abortion in India through MTP Act, 1971 was a first, yet incomplete, step towards recognizing the freedom, choice and rights of the women around her reproductive life. The discourse of debate and discussion about making the services of MTP more accessible to the women of this country and incorporate various other women's rights has a long history in this country initiated by women organization, human right activist, health right activists and population experts. The amendments proposed under this Bill attempts to address few of such issues but have not considered many other fundamental issues related to rights and choice of women. Major issues covered by draft Bill (which was made accessible to public on 29th October 2014) are as follows:

- 1- **Accessibility and Availability of MTP Services:** The accessibility and availability of abortion facilities to the women have been of prime concern in last few decades. Due to un-availability of MTP service providers and health facilities, unauthorized service providers conduct a large number of abortions illegally and in an unsafe manner. The proposed Bill has planned to incorporate medical practitioners of AYUSH and registered nurse and midwives as service provider. Involving all these health service providers will suddenly increase number of MTP service provider across the state.
- 2- **New Technology:** The Bill recognizes the efficiency of new technology in the area of abortion to handle cases successfully even in the third trimester. Relying on new technology the Bill has increased the gestation period from the existing 20 weeks to 24 weeks.
- 3- **Statutory Provisions:** The Bill has expanded the section on offences and penalties of the principal Act of 1971. With the amendment in this section, the Bill seeks to regulate the MTP service providers, place of abortion and privacy of women.

There are number of other issues, which were not taken into consideration by this Bill. These issues have been a part of public discourse for years in this country. Some of these issues are as follows:

- 1- **Women's Reproductive Rights:** The existing MTP Act neglects the woman's right to choose abortion. Safe and legal abortion is allowed only if a physician authorizes it. The current draft Bill waives the requirement of service providers' opinion up to 12 weeks of pregnancy. However, a woman doesn't have the choice of abortion after 12 weeks of pregnancy. Woman cannot simply state that it is an unwanted pregnancy. She must provide explanations that fit into the conditions listed in the MTP Act, and it is medical opinion that has the power to decide whether the woman meets the requirements of the Act. That is, expert medical opinion must certify either that the pregnancy involves a risk to the life of the woman or would cause grave injury to her physical or mental health, or alternatively, that there is a substantial risk that a seriously handicapped child would be born⁷.
- 2- **Population Policy and Violation of ICPD Agreement:** Women organizations have been arguing that the MTP Act came out as a family control measure where abortion was seen as a secondary method of population control. India is a signatory of landmark ICPD (International Conference on Population and Development), 1994 agreement. The agreement bound its signatories to making sure that "reproductive rights which women's groups have been advocating since the '80s, and not population control, would be the cornerstone of their respective

⁷ <http://kafila.org/2012/05/11/abortion-as-a-feminist-issue-who-decides-and-what/>, Accessed on 09/12/2014

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family planning programmes". Implicit to reproductive health, was "the right of women and men to be informed and have access to safe, effective, affordable and acceptable methods of family planning of their choice⁸". The proposed Bill has failed to imbibe the India's commitment at a signatory of ICPD agreement.

- 3- **Training and Methodology of MTP:** The Bill is radical in recognizing various kinds of health service providers as MTP service provider. However, the Bill has not specified the training, experience, place of abortion and methodology of abortion by various service providers. The expert group constituted by the ministry in 2010 highlighted the need of distinguishing the methodology and authorizing service providers for MTP accordingly.
- 4- **Sex Selective Abortion:** there are number of cases where MTP has been misused for the sex selective abortion in the obsession of having male child in family. It is one of the reasons often cited by policy makers to not universalize the services of MTP Act as a right of women. The Bill has not addressed this issue at all.

⁸ <http://www.dnaindia.com/lifestyle/report-contraindication-2039572>, Accessed on 06/12/2014

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PART III. THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2014

The Medical Termination of Pregnancy (Amendment) Bill, 2014 largely deals with the broadening the base of service providers and incorporating provisions of offences and penalties in the principal Act along with few other changes in technicalities of abortion. Major provisions of the Bill are as follows:

- The draft Bill allows Ayurveda, Unani, Siddha and Homoeopathy practitioners to conduct MTP. So far, only trained allopathic practitioners are allowed to conduct abortion. The Bill has also planned to authorize a nurse or auxiliary nurse midwife who possesses any recognized qualification in general nursing or auxiliary nurse midwifery as per Indian Nursing Council Act, 1947.
- The Bill has not described minimum training, experience and qualification to recognize any health service provider as MTP service provider. The newly inserted section '3A' for this purpose leaves these modalities probably for rules, which will be prepared outside the parliament ambit.
- The proposed Bill has increased the gestation limit from existing 20 weeks to 24 weeks and made abortion on request of women if the length of pregnancy is below 12 weeks. Conditional abortion for the pregnancies of more than 12 weeks still needs opinion of MTP service provider. Such abortion still neglects choice and sexual rights of women.
- The Bill has expanded the scope of offences and penalties under the MTP Act by listing few offences and recommending penalties. In the principal Act offences and penalties are as per the Indian Penal Code.

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PART IV. CRITIQUE OF THE BILL

Various groups of allopathic medical practitioners including Indian Medical Association have criticized the proposed Bill. So far, women organization, human rights group, health activists and political parties have not commented visibly on the proposed Bill. Some of the critiques of the Bill are as follows:

- Indian Medical Association (IMA) opposed the proposed amendment to the MTP Act based on allowing AYUSH practitioners and Paramedical staff to conduct abortion. The IMA members also stated that the proposal of permitting the non MBBS doctors and paramedical staff to conduct MTPs is against the provision of Clinical Establishments Act, which does not recognize even paramedical personnel trained by the doctors for conducting medical procedures.
- Director and HOD of Institute of Reproductive Medicine and IVF centre Brigadier (Retd) Dr. R. K. Sharma said, “Getting the MTP done by untrained and unprofessional general practitioners is a retrograde step because neither they are trained for this nor they would be equipped to handle any emergency arising out of this MTP which might result in jeopardizing the life of a pregnant woman⁹.”
- The president of Federation of Obstetric and Gynecological Societies of India (FOGSI) Dr. Hema Divakar said, “As of now, we apprehend a few shortcomings, as the amendment has to be properly worded. Both these proposals are revolutionary and long awaited. However, we see a lack of cohesive approach here. The time frame (November 10) specified by the Union Ministry of Health & Family Welfare for experts to submit their suggestions/advise is too short. We need a serious thinking, involving all the stakeholders concerned, before any decision is taken¹⁰.”
- FOGSI also highlighted need of introducing medical abortion pills on a priority basis for early termination of pregnancies, which is not there in the Bill.

⁹ http://articles.economictimes.indiatimes.com/2014-11-06/news/55835712_1_indian-medical-association-ima-members-20-weeks, Accessed on 08/12/2014

¹⁰ <http://www.pharmabiz.com/NewsDetails.aspx?aid=85056&sid=1>, Accessed on 07/12/2014