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BETWEEN LAW AND LIFE: A SOCIO-LEGAL STUDY ON MEDICAL TERMINATION OF PREGNANCY, 1971–2025

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ABSTRACT:

The philosophy of yin and yang applies to most of the problems in society. The current society has developed a perspective called equality, where both men and women are equal yet there is still social stigmas which pushes women to an informal system. Here, yang represents evolving laws and yin represents unlawful termination. When law does not evolve over a long time it leads to an increase in crime. One of the serious offences against life under conservative perspective is Medical Termination of Pregnancy, known as abortion. Medical Termination of Pregnancy Act, 1971, as amended in 2021, provides the exclusive legal framework governing abortion service in India. Abortion remains a criminal offence under section 88 of BNS, 2023 with MTP Act serving as the sole statutory exception. Even though it is considered an offence against life, there are risks for the mother, when MTP is done in “Third-trimester” or when the patient is a minor. The POCSO Act imposes mandatory reporting for minors, while the PCPNDT Act creates restrictive compliance burdens. especially for minors and second- trimester procedures. These laws impose mandatory reporting and strict documentation, often deterring providers from offering services. Despite legal provisions, about 78% of India's 15.6 million annual abortions are unauthorized due to regulatory barriers, driving women towards unsafe options. This paper deals with laws related to medical termination of pregnancy and punishment for illegal abortion. It consists of statistical data on annual incidence of illegal abortion. The main aim of this paper is to assess societal awareness about the risk of medical termination of pregnancy and steps taken by the government to prevent unauthorized MTP in India.

KEY WORDS:

Medical Termination of Pregnancy (MTP) Act, Abortion, Bharatiya Nyaya Sanhita,2023 (BNS), POCSO Act, PCPNDT Act, Trimester based risk, minors, India.

I. Introduction:

Indian mythology depicts land (bharat) as “bharat mata” or “bhooma devi” which shows respect for women. But at same time there exists gender discrimination, where boys are preferred over girls in India. Even during British period female infanticides were prevailing in India and government of India after independence enacted Pre-Conception and Pre-Natal-Diagnostic Techniques act 1994, to

prevent determine gender of the child. It was enacted to prevent unauthorized MTP due to gender discrimination. The doctor who performs pre-natal-diagnosis will be punished with imprisonment and fines. The doctor who performs abortion also needs a certain level of qualification. In case a minor child is forced by her family or any other person to abort the child, they will be charged under Prevention of Children from Sexual Offence (POCSO)

act, 2012. The consent of the mother is necessary in MTP, not the family members. MTP is also used on rape victims and on the foetus which has deemed to be deformed thus it makes the child to suffer from serious physical or mental abnormalities after birth. Under section 5(1) of MTP Act, abortion can be done at any stage when the medical practitioner believes that it is immediately necessary to save the life of pregnant women. This research navigates the legal framework and effect of MTP along with statistical information.

II. Navigating MTP Legal Frame Work:

The Medical Termination of Pregnancy (MTP) Act, 1971, as amended in 2021, provides the exclusive legal framework governing abortion services in India. Abortion remains a criminal offense under section 88 of the Bharatiya Nyaya Sanhita (BNS), 2023 (formerly section 321 of Indian penal code), with MTP Act serving as the sole statutory exception. Performing or obtaining abortion outside this legal framework constitutes a cognizable offense with severe criminal penalties. In unauthorized medical practitioners performing ranging from 2 to 7 years under section 5 of MTP Act. This is now classified as a cognizable offense, allowing police to arrest the doctors without warrant.

The MTP Act practices the case of *X v. principal secretary* (2022) and Health and family welfare department Govt of NCT Of Delhi (2022) the case expanded the interpretation of Medical Termination of Pregnancy (MTP), Granting the reproductive rights to unmarried women by holding that the MTP Act benefits for consensual pregnancies between 20 and 24 weeks apply to all women, not just married women. It affirms reproductive autonomy, dignity, and privacy as fundamental rights under article 21 of Indian constitution. Owners of unapproved facilities conducting abortion procedures face identical penalties under Section 5(3) and 5(4) of the MTP Act. The term "owner" encompasses any person who is the administrative head or otherwise responsible for the facility's working or maintenance. Under Criminal Law, Abortions

conducted outside the MTP Act framework attract penalties under BNS Section 88.

III. OBJECTIVES:

To criminalize and prevent abortion in unhygienic, unauthorized hospitals or clinics or any other places. To provide access to safe, regulated and legal medical abortions to all women. This act was made on health measures, humanitarian and eugenic grounds.

IV. MTP Rules Under MTP Act:

Rule 3(b) of MTP act states that change in marital status of women during ongoing pregnancies renders that women to be eligible for termination of pregnancies under 3(2)(b). The concept behind this Rule 3B(c) is similar to Rule 3B(g). The change in marital status in the above Rule has broader scope which include widowhood, divorce, abandoned by her family or her partner too. This was made so because she may no longer be able to maintain herself or be able to provide enough financial resources to her child after birth. A pregnant woman may be eligible for termination of pregnancy if she finds that her fetus is abnormal or she has been diagnosed with acute or chronic illness which may also affect the child in her womb. Section 4(b) this act termination of pregnancies can only be done in government hospitals or places approved by the government.

V. Regulatory Requirements for Legal Abortion Practitioner Qualifications:

Practicing medicine becomes highly risky when the doctor doesn't know the medical history of the patient. In the case of MTP, doctors must consider the physical condition of the patient. He should take appropriate assessment to determine the clinical risk, chronic or acute medical condition to make necessary modifications. The Medical Termination of Pregnancy (MTP) Act, 1971, as amended in 2021, seeks to ensure that only qualified medical practitioners can perform abortion in a safe and regulated environment. The act permits only

registered practitioners (RMP) with specific qualification may perform abortion:

- A. MBBS degree from a recognized institution
- B. Registration in state Medical Register
- C. Specific training/experiences in gynecology and obstetrics
- D. AYUSH practitioners are explicitly prohibited from performing abortions

VI. Facility Authorization Legal Abortion Facilities Must Have:

The MTP Act which has been amended in 2021, seeks to ensure that abortion is done in a safe and regulated environment. Abortion must be carried out in government hospitals or safe abortion clinics in India approved by the government under MTP Act. Any abortion conducted outside other than government hospitals and safe abortion clinics are deemed to be unauthorized abortion are illegal and dangerous.

A. Medical Abortion:

Medical abortion is termination of pregnancy using medications such as Mifepristone and Misoprostol. Medical abortion can be allowed up to 9 weeks using abortion pills (Mifepristone and Misoprostol). It helps to avoid surgical risk but in case of incomplete abortion, the patient needs to undergo surgery. It may cause side effects such as bleeding, diarrhea, nausea and cramping.

B. Surgical Abortion:

Surgical abortion used for pregnancies beyond 9 weeks, involving manual or vacuum or aspiration. It is the termination of pregnancy using medical procedures through surgical instruments. The success rate of surgical abortion is 98% along with serious risk

that may lead to hospitalization or inability to conceive a child thereafter, if done in an unsafe and improper environment. Even though it has a high success rate it carries risks such as infections, injury to the uterus or cervix.

The clinic deemed to be legal and can perform abortions only when they satisfy these conditions: Valid registration under Clinical Establishment Act, 2010. MTP certificate from appropriate authorities. Proper infrastructure and equipment standards. Compliances with reporting and documentation requirement. Intersecting Legal Complications.\

VII. MTP Act, 2021:

The MTP Amendment act 2021 was made on the basis that the law should evolve with time and should not be restricted by social norms. Law must not be static and it should evolve towards a gender equal society. It extends the benefit of statute to all women including single and unmarried women. It also extended the benefit of legal presumption of grave injury to mental health of women on account of the failure of contraceptives to all women (including unmarried and single women).

VIII. Intersecting Statutes:

A. POCSO Act Implications:

The Protection of Children from Sexual Offences Act, 2012 generally POCSO Act is an act made to prevent children from sexual offences and to punish the offender. It is the result of article 15(3) which states that states can make special provisions for women and children. It is the duty of the doctor when the patient is found to be minor to report to a special juvenile police unit or local police under section 19 of POCSO Act. Failure to report results in punishment and fine since it's considered as negligence of his duty under 21 of POCSO Act. Under section 19 of POCSO Act RMP is exempted to disclose identity of the minor in any criminal proceedings which may follow from RMP report under section 19(1) of POCSO Act. The Protection of Children from Sexual Offences Act, 2012 creates additional

criminal liability: Mandatory reporting requirements for medical practitioners treating minors. Failure to report can result in up to 6 months imprisonment. Creates deterrents effect for providing services to adolescents

B. PCPNDT Act Enforcement:

Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 is an Act of parliament of India enacted to stop female foeticides and arrest the declining sex ratio in India. The Act banned prenatal sex determination. The main purpose of enacting the act is to ban the use of sex selection techniques before and after conception and prevent the misuse of prenatal diagnostic techniques for sex selection abortion. Any medical practitioner, owner, employee of genetic counselling Centre, laboratory violates PCPNDT Act, they will be punished with up to three years of imprisonment and fine amount of Rs 10000 for first offence as per section 23 of PCPNDT Act. It also bars any person from selling any equipment which is capable of determining the gender of the child. The Pre-Conception and Pre-Natal Diagnostic Techniques Act severely impacts abortion access:

1. Extensive documentation and reporting requirements
2. Same penalties for minor infractions as major violations
3. Creates “chilling effect” on medical, particularly for second-trimester procedures.

C. Constitutional and Judicial Perspective:

According to article 21 which states that “no person shall be deprived of their right to live and personal liberty except procedure established by law”, here arises a question whether abortion is a violation of right to life or

not. Since it is personal liberty as mentioned in article 21 of women to keep the child or not. This article judicially interpreted to encompass the right to dignity, bodily autonomy and privacy. The supreme court frequently held that abortion requires consent of pregnant women, not the family members. The Supreme Court in **X v. Health and Family Welfare Department, Govt. of NCT of Delhi (2022) SCC Online SC 905** held that the consent of pregnant women is paramount in abortion decisions and neither the family nor the court can interfere. In **Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1**, supreme court held that the right to personal liberty includes the right to make reproductive choices. Under the article 21, right to privacy - no practitioners should disclose information on the patient except to the persons that law specifies. Section 5A of MTP act of 1971 states confidentiality of patient details. It is the result of article 21- right to privacy.

IX. Public Health Impact:

The Medical Termination of Pregnancy Act, 1971, opened a new era in women’s health by establishing a framework that empowered women to exercise basic control over their bodies, because causing a miscarriage voluntarily was a crime under the Indian Penal Code, 1860, and women were also subject to prosecution. An issue on the public health impact of unsafe abortion has existed for a long time. As early as 1967, unsafe abortion was recognised as a severe public health problem by the World Health Organization’s Reproductive Health Strategy, established by the World Health Assembly in 2004. It significantly reduces the public health impact burden of unsafe abortions by legalizing abortion, which lowers maternal mortality and morbidity from unsafe procedures. Research indicates that approximately 78% of all abortions in India (12.3 million annually) are illegal solely due to MTP Act violations, highlighting the gap between legal framework and ground reality. Unauthorized clinics exploit this vulnerability, contributing to:

- A. Increased maternal mortality and morbidity
- B. Unsafe abortion practices
- C. Exploitation of women in distress

X. Biological Impacts of Unsafe Abortions:

This year, over 9 million women will face complications as a result of unsafe abortion including life-long injuries, severe disability, heavy bleeding, damage to internal organs, or losing the ability to become pregnant in the future. 22,800 of these women will die. In worldwide, some 5 million women are hospitalized each year for treatment of abortion-related complications such as hemorrhage and sepsis, and abortion-related deaths leave 220,000 children motherless. The main causes of death from unsafe abortion are hemorrhage, infection, sepsis, genital trauma, and necrotic bowel. Data on nonfatal long-term health complications are poor, but those documented include poor wound healing, infertility, consequences of internal organ injury (urinary and stool incontinence from vesicovaginal or rectovaginal fistulas), and bowel resections. Other unmeasurable consequences of unsafe abortion include loss of productivity and psychologic damage. The burden of unsafe abortion lies not only with the women and families, but also with the public health system. Every woman admitted for emergency postabortion care may require blood products, antibiotics, oxytocic, anesthesia, operating rooms, and surgical specialists. The financial and logistic impact of emergency care can overwhelm a health system and can prevent attention to be administered to other patients. Therefore, unsafe abortion is a major public health issue with profound biological, psychological, and socio-economic impacts, underscoring the necessity of accessible, safe abortion care and reproductive health services.

XI. Data On Abortion in Unauthorized Clinic:

Abortion performed in unauthorized or illegal clinics is associated with significantly higher risks of complications and adverse health outcomes compared to produces conducted in licensed or supervised settings. Generally, unsafe abortion can lead to incomplete abortion and uterine rupture. And MVA is recommended in the first trimester, and D&E is recommended in the second trimester. It is essential to counter the trend of sex selective abortion, particularly in developing countries. Unsafe abortion can lead to complications such as incomplete abortion and uterine rupture. Complications due to abortion are more frequent if not performed by experienced surgeons. In our case, the manual vacuum and aspiration technique was used during the second trimester of pregnancy, which led to uterine perforation. Unauthorized clinic abortion is marked by unsafe, unregulated and often brutal methods- frequently resulting in traumatic injury, infections, infertility, and high maternal mortality rates. Common unsafe methods reported: Physical methods: inserting foreign objects into the cervix or uterus, abdominal trauma, or other invasive actions performed by unqualified individuals. Chemical or toxic methods: ingesting or introducing caustic substances, or using improperly dosed medications obtained outside medical supervision. Cherry-picked or herbal remedies and unsanitary instrumentation are frequently described in reports from various regions and contribute to complications such as perforation, sepsis, and organ injury. Characteristics of the setting: lack of sterile technique, absence of anesthesia, poor fever and infection control, and no available emergency care if complications arise. These factors collectively elevate risk. Data sources and how to cite: Global estimates come from standardized analyses by the WHO, the Guttmacher institute, and national health surveys, often published in major health journals. For research, prioritize peer-reviewed sources and reports that

distinguish safe, less safe, and least safe categories, and extract comparable matrices such as rates of completed abortion, complications and morality by settling and region. Research considerations and cautions: Beware of regional legal contexts and terminology that can influence reporting and data quality. When comparing studies, ensure consistent definitions of safety categories and timeframes. Include limitations such as underreporting, stigma and access disparities that affect data interpretation.

XII. Reforms And Recommendation:

In *Navej Singh Johar (supra)* the court emphasized transformative nature of our constitution and the court observed that the transformative constitutionalism places a duty on judiciary to “ensure and uphold the supremacy of the constitution while at the same time ensuring that a sense of transformation is ushered constantly and endless in society by interpreting and enforcing the constitution as well as other provisions of law in consonance with the avowed object”. The parliament has amended the MTP Act as progressive legislation which is introduced to uphold women’s right to live with dignity and the amendment bill was termed as progressive legislation. Under article 6 of international convention on Civil and political rights which states that state has legal responsibility to provide safe, legal access to abortion. The benefits of the statutes were extended to all women including unmarried and single women too. The illegal abortion in India has been significantly reduced but not entirely. According to UNFPA Unsafe abortion remains the third leading cause of maternal mortality in India. Close to 8 women die each day due to causes related to unsafe abortion. India needs more strict rules, monitoring and action against illegal abortions.

XIII. Conclusion:

Abortion in unauthorized private clinics constitutes serious criminal offense under Indian law, carrying substantial imprisonment

terms for both practitioners and facility operators. The legal framework, while providing exceptions for registered medical practitioners in approved facilities, maintains strict criminal sanctions for unauthorized practice. Recent enforcement actions demonstrate active prosecution of violations, emphasizing the importance of compliance with MTP Act requirements for legal abortion provision. The intersection of multiple statutory frameworks creates a complex legal environment that, while intended to ensure safe abortion access, may inadvertently push women toward illegal providers due to barriers in accessing legal services. This underscores the critical importance of understanding both the criminal penalties for unauthorized practice and the regulatory requirements for legal abortion provision in India.

XIV. Reference:

1. *Navej Singh Johar v. Union of India*, MANU/SC/0947/2018 : (2018) 10 SCC 1, at paragraph 122
2. Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/36 (30 October 2018).