

Medical Termination of Pregnancy: Ethical, Legal and Social Consideration

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Abstract

Medical termination of pregnancy (MTP) act was first enacted in 197 [1] for making the legal rules for the termination of certain pregnancies by Medical Practitioners¹ and further amended 2003 [2]. Many times the Medical Professionals are faced with the requests of terminating the pregnancy outside the ambit of provisions of MTP act which may be referred to Honorable Courts. The author illustrates two such cases in which Honorable courts were approached as the termination of the pregnancy was not legally allowed. The authors intend to highlight the aspects which should be considered while taking a decision in such matters. A multidisciplinary Medical Board consisting of Radiologist, Obstetrician and Pediatrician should be constituted. The Board so should also include a Psychiatrist and a Forensic Medicine expert. The Medical Board should not only consider the parameters envisaged in the Medical Termination of Pregnancy Act while undertaking the evaluation but should also weigh the benefits of the mother vs the unborn child.

Keywords: Termination of pregnancy, Criminal Abortion, MTP Act, Trimester, Medical Board.

Introduction

Medical termination of pregnancy (MTP) act was first enacted in 1971 for making the legal rules for the termination of certain pregnancies by Medical Practitioners [1] and further amended 2003 [2]. Many times the Medical Professionals are faced with the request of terminating the pregnancy outside the ambit of provisions of MTP act from individuals like relatives or even pregnant females some of whom may be minor. This causes a situation of dilemma as heeding to the request

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will be a criminal offence whereas continuation of the pregnancy may be hazardous to the female psychologically, socially or physically. Such matters are then referred to Honorable Courts. The author illustrates two such cases in which Honorable courts were approached as the termination of the pregnancy was not legally allowed. The authors intend to highlight the aspects which should be considered while taking a decision in such matters.

Case 1: [3,4]

A minor who was an alleged rape victim filed a petition through her father for urgent directions from Honorable Delhi High Court to allow the petitioner to medically terminate her pregnancy. She was allegedly rescued but initially refused to go to her parents and was sent to welfare centre under Child Welfare Committee (CWC). Later she returned to her parents, and expressed her desire to undergo medical termination of her pregnancy. Advice was sought from All India Institute of Medical Sciences, New Delhi and a multidisciplinary Medical Board was constituted for the same to ascertain and record the consent of the petitioner to both undergoing the evaluation as well as the possible termination of pregnancy.

The case was examined by the board members and it was opined that "the duration of pregnancy is 26 week + 5 days, which is corroborated by the clinical and the Ultrasound (USG) examination. At this

advanced gestation, the foetus has reached a period of viability and if born at this gestation has a reasonable chance of survival. Additionally with birth at this gestation the baby is likely to require intensive care including mechanical ventilation for a long time which may predispose to a variety of complications including adverse neurological outcome in later life. Termination of pregnancy at this age is relatively unsafe for the mother also. The petitioner and her parents have verbally consented for termination of pregnancy, but separate informed consent shall be required for subsequent medical and surgical procedure at a later stage during treatment. Psychiatric examination and Current Mental State Examination did not reveal any abnormality."

In view of the above report, the Honorable Court did not accede to the prayer of allowing medical termination of pregnancy.

Case 2: [5]

The petitioner sought a direction from Honorable Delhi High Court for quashing of Section 3(2) (b) of the Medical Termination of Pregnancy Act, 1971 which stipulates that beyond 20 weeks of pregnancy, abortion would not be permissible. The petitioner was in the 24th week of pregnancy and submitted the Ultrasonography (USG) report of foetus which showed developmental abnormality in the head and spine. It was stated that the medical condition of the fetus is abnormal and in all probabilities would result in severe brain damage to the fetus. The matter was referred to All India Institute of Medical Sciences (AIIMS) and a multidisciplinary Medical Board was constituted to assess the condition of the fetus.

The deliberations of the seven member Medical Board were that the patient has 25 weeks gestation. USG examination repeated at AIIMS confirmed gross Cranio-spinal malformation. The board opined that *"the malformation is significant enough to cause gross neuro-developmental problems in the baby. Since the pregnancy is pre-viable, MTP may be conducted. The clinical mental state examination revealed no obvious abnormality."*

In view of the AIIMS Medical board report, Honorable court allowed the medical termination of pregnancy.

Discussion

A total of 1.6 crores abortion took place in the year 2015 out of which 81% happened outside public sector and may be unsafe abortions [6]. If this is the scenario even after the enactment of legislation we can very well imagine the condition before enactment of MTP Act. MTP act not only safeguards the interests of both mother and the unborn child but also give protection to doctors working in legal framework against any charges/litigation. The following are the salient points of the MTP Act [1,2]:

1. The pregnancy may be terminated only by a registered Medical Practitioner under Indian Medical council act.
2. The termination of pregnancy of less than 12 weeks may be carried out by a single doctor and if greater than 12 weeks then the opinion of two doctors is necessary.
3. The termination will be carried out only if:
 - (i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her 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.
4. No termination of pregnancy shall be made at any place other than a hospital established or maintained by Government, or approved for the purpose of this Act by Government or a District Level Committee.
5. The MTP will be conducted only with the consent of the woman. In case of a woman who is below eighteen year or mentally ill, MTP will be conducted only after the written consent of her guardian.
6. The act has punishment provisions including prison terms for different offences under its purview for the doctors, hospital owners, relatives of women etc.

The MTP Act does not allow even the pregnant woman to terminate the pregnancy at her will and pleasure. Any such abortion is considered as Criminal Abortion. Criminal abortion means the unlawful termination of pregnancy and expulsion

of the products of conception in contravention with the provisions of MTP Act 1971 [7]. They are usually done within the 3rd month of pregnancy and may lead complications and death also. These types of abortions are generally carried out by unqualified quacks in an unregistered medical setup. The pregnant women are generally widows, unmarried girls and even married women who are not aware of the statutes of the law or are hiding their pregnancy due to social stigma. There are different punishments for criminal abortions under Section 312-318 IPC [7]. So any doctor who will be conducting an abortion even with the consent of an adult female but outside the purview of the MTP act will be liable for punishment under Indian law including prison term.

In rape cases also, the anguish caused by such pregnancy is presumed to constitute a grave injury to the mental health of the pregnant woman. When a 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. So abortion is allowed in both such cases but within the limit of 20 weeks of gestation period [1,2,7].

In both the cases illustrated above, the pregnancy had crossed the limit of 20 weeks and women had to approach the courts for intervention. Honorable court gave opposite verdict in both cases despite the first petitioner being a minor and allegedly the pregnancy was result of a rape. We have to understand the basis of the decision. The Matter was referred to a multidisciplinary Medical Board who not only assessed the condition of the women but also assessed the probability of foetus being viable. Moreover psychiatric evaluation and Forensic evaluation for legal and ethical aspects was also done. In first case, preterm induction of labour could have caused developmental abnormalities in an otherwise healthy child whereas in second case the child had cranio-spinal malformation with very less chance of survival. So the MTP was denied in first case and allowed in second case. Previously also Medical Termination of Pregnancy (MTP) has been facilitated even in cases where the threshold of 20 weeks, was crossed [8,9]. The Medical board should mandatorily comprise of the following:

1. *Obstetrician*: To assess the Pregnancy related aspect and health of mother.

2. *Paediatrician*: To assess the health and viability of the foetus.
3. *Radiologist*: To assess the developmental status of foetus using USG or other techniques.
4. *Forensic Medicine expert*: for ethical and legal consideration like consent etc.
5. *Psychiatrist*: To assess the mental status and mental well being of the mother.

Conclusion

The Medical professionals play a key role for the Effective implementation of the legislation in MTP act but exception has to be made on a case to case basis. But they should be with the approval of proper authorities like High court etc. A proper multidisciplinary Medical Board consisting of Radiologist, Obstetrician and Pediatrician should be constituted. The Board so constituted shall also include a Psychiatrist who can appropriately assess the mental condition of the mother and a Forensic Medicine expert for opining on ethical and legal aspects. The Medical Board should not only consider the parameters envisaged in the Medical Termination of Pregnancy Actwhile undertaking the evaluation but should also weigh the benefit to the mother vs the unborn child.

Conflict of Interests: Nil

Funding: Not required

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