

ASSIGNMENT - 4

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1. The MTP act was the first attempt to legislate the abortion in India. True or False ?

The MTP act on 1971 made the abortion legal in India. As the illegal abortions and maternal mortality rate was very high and thousands of women were losing their lives. In 1964 the liberalisation of laws started in India as the maternal mortality rate increased due to the unsafe abortion. After the Shah Committee was appointed to review about the socio cultural legal and medical aspects of abortion in 1966 and to legalize abortion and to save lives and health of women. The MTP act passed in 1971 to legalize the abortion in India. The term medical termination was used to prevent the opposition of social and other religious groups.

2. On what basis did IPC of 1862 criminalise abortion?

The Code of Criminal Procedure in 1898 and the Indian Penal Code in 1862 in the British Person Act in 1861 made the abortion an offensive crime and punishable. It was a result of viewing abortion as an immoral act striking at the sanctity of life. This is the view that embodied in the Indian Penal Code of 1860. This attitude is even supported today. The Penal Code described as the intentional miscarriage under section 312 in 1860s Indian Penal Code. The only time abortion was possible legal was when pregnancy is dangerous to the life of women. T

Who is liable to be punished for abortion under IPC of 1862?

It is a punishable crime for both the abortion providers and the women whoever voluntarily caused a woman with child to miscarry have to undergo three years in prison and/or a fine, and the woman availing of the service have to face seven years in prison and/or a fine.

What are the implications of IPC 1862 on the rights of pregnant women ?

The abortion in any cause is punishable for the women and providers in the Indian Penal Code of 1862 until it is for saving the lives of women. In short women have the right to abortion if it cause any threat to her life. The increased maternal mortality rate and unsafe abortions led to the appointment of Shah Committee by government of India and Committee in 1966 recommended legalizing abortion in its report to prevent wastage of

women's health and lives on both compassionate and medical grounds. The more than 30 years of liberal legislation about still the majority of persons in India lack the access to the safe abortion.

What were some concerns expressed by the members of parliament when MTP act was first introduced in 1971?

The MTPA act was initiated by the family planning organisation and it was defended by the congress ruling party as legislation to emancipate women. When the Shah committee submitted the report to every state it was the Tamil Nadu Dravida Munnetra Kazhagam opposed it. On November 17, 1969, it was introduced into the Rajyasabha by S. Chandrasekharan, the health minister. The split and falling of the congress party led to the bill being frozen. In 1971, after the midterm election, the new health minister, Chandrapadhyaya, introduced the bill in August 2nd, 1971, and with the support and passage in both houses it became a law. The views of the members of the communist and congress parties and doctors about MTP were that it was a method for the prevention of population or a birth control device, more than the emancipation of women. This idea began to spread in society. It is important that the health ministers Chandra Shekar and Chandrapadhyaya introduced the bill in 1969 and 1971 as emancipation for women. A lot of the Muslim community disagreed with the legislation. The deputy health minister, Chandrapadhyaya, who introduced the bill, said that 4 million abortions take place every year and that Swadharma should be Yudharma. The other congress members also supported the bill. The VC Mahajan from Kangra favoured its passage and told that an imaginative and halfhearted thought just the passage of the bill never by women a great freedom. The communist party also supported the bill as it will favour them for the election.

Discuss the implications of the MTP act on the rights of pregnant people?

MTP Act allows the consent of the pregnant woman, whether married or unmarried, is required for termination of pregnancy, except in the case of minors and mentally disabled women where the guardian has to consent to medical termination of pregnancy. Courts have recurrently honored the woman's or girl's wishes to continue a pregnancy and adult woman's exclusive right to consent to the abortion. The act was ignoring the fact that the women were not the only community who seeks termination of the pregnancy. In such cases, MTP is excluding the trans men, pregnant individuals who do not identify as women, so unsexing the pregnancy is the most important thing needed. Impact made by the MTP should be judged by the context of changing social values and attitudes. The social and personal implications of MTP in unmarried girls and MTP in married women are entirely different. MTP in married women is not considered as a

social stigma whereas MTP in unmarried girls is not easily accepted and even considered as a taboo. So to avoid societal shame and taboo the girls have to seek the MTP from distant places. This social legislation has certainly decreased incidence of suicide in these women because they can seek safe abortion under the law but most of the time the women have experienced bullying from the doctors as they seek abortion help. The health of the woman has also shown improvement due to the MTP facilities but rural areas still lack the facility. The Courts in India have confirmed that providers only needed the consent from an adult woman for an abortion. Husbands, boyfriends, brothers, parents, and in-laws, have no right to consent to an abortion or to refuse to consent to termination. Even though the MTP services are available in rural areas, it is not sure of its effectiveness and safety. The high-risk cases are not recognized and MTP is done in such cases without adequate back-up services. This results in the immediate complications and long-term morbidity in terms of infertility, menstrual disturbances and pelvic inflammatory disease (PID).

What was the rationale behind amending the MTP act in 2002?

The MTP in 1971 was amended in 2002 to provide better implementation and to increase access to women especially in the private health sector. The amendment decentralized the act by approving the private place to offer abortion services to the district level. The District level committee is to approve a private place to offer MTP services in order to make an increase the number of providers offering CAC services in the legal ambit. The amendment also changed the word 'lunatic' and was substituted with the words 'mentally ill person'. This change was to lay emphasis that "mentally ill person" means a person who needs treatment by reason of any mental disorder other than mental retardation.

Mention some gaps in MTP act?

The dignity, autonomy, justice and confidentiality for those who need to terminate pregnancy is missing. The amendments do not translate into an actual shift in power from the doctor to the person seeking an abortion. Thus, abortion remains a conditional provision and not an absolute right. The MTP amendments categorise only those pregnancies result from sexual violence as legitimate claim to abortions beyond 20 weeks, thus creating a hierarchy to the victimhood it also has the gestational limit for them at 24 weeks. Forcing a person to carry a pregnancy to term is a violation of their right to life and dignity, especially when the mental trauma resulting from the sexual violence is immense, as reflected in the 1971 MTP Act itself. The current MTP law

current law reflects heteronormative-patriarchal understandings of family planning as a means of population control, rather than an exercise of reproductive autonomy. This will also exclude the sex workers and other gender diverse person in trouble to give the details about the partners while to get the abortion.

How Can the MTP be improved?

The MTP gives approval for the women to terminate the pregnancies without any reason within 12 weeks and for pregnancy exceeding 20 weeks, women have to get a certificate or recommendation from two certified doctors/medical practitioners. The MTP Act makes sure that women's right over her body, but it is also restricting. The Act protects women from a life-threatening situation if the pregnancy goes wrong. The MTP Act gives limited rights to women for making the decision for herself to abort the fetus at a certain point of the pregnancy to protect their own health and life. The act isn't right based; it is instead centred around the providers. The frame structure of the MTP looks like the act intended to provide the protection of providers not the autonomy and right of pregnant people. The pills can be only prescribed by the gynecologist only and can be bought from the registered medical shop which will create a problem for the pregnant person in the rural area. The pregnancies result from the sexual violence has the right to abort if it exceed beyond 20 weeks. They also provide a gestation period for the pregnancies caused through sexual violence at 24 weeks. It does not account the trauma and mental health problems. The current law allows only obstetricians and gynecologists; and MBBS doctors who got a special 2-week training to offer abortion services – this long training time severely restricts the availability of abortion providers. The draft MTP (Amendment) Bill 2014, presented by the Central government for the public opinion, had proposed expanding the abortion provider including nurses and AYUSH practitioners. Most gynecologists and specialists are concentrated in urban areas and, hence, seeking authorisation from these Boards will result in substantial costs as well as delays for marginalised persons, especially those in rural areas and this will disproportionately impact groups such as Dalits, and Adivasis, for whom the structures of caste and class already act as barriers to accessing quality healthcare. Unfortunately, this fact has been omitted in the final amendments this is a fail in making abortion services safe and easily available for women especially in rural areas that lack qualified allopathic doctors. The amendment has changed pregnant women husband to partner and still needs details of this person to get abortion. but it creates problems and excludes sexworkers, trans people and gender diverse individuals. UNsexing pregnancy is also a need of the hour.

