THE MEDICAL TERMINATION OF PREGNANCY  
(AMENDMENT) BILL, 2018

BY

SHRI SHRIRANG APPA BARNE, M.P.

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further to amend the Medical Termination of Pregnancy Act, 1971.

Be it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Medical Termination of Pregnancy (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 3 of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the principal Act), in sub-section (2), in clause (b), for the words "twenty weeks", the words "twenty-four weeks and in case of rape survivor', anytime during the pregnancy but before twenty-seven weeks" shall be substituted.

3. For section 4 of the principal Act the following section shall be substituted, namely:—
4. No termination of pregnancy shall be made in accordance with this Act at any place other than a hospital or medical college established or maintained by the Government of India.

4. After section 4 of the principal Act the following section shall be inserted, namely:—

"4A. (1) There shall be established a Board to be known as Central Supervisory Board which shall consist of such number of eminent medical Geneticists, Gynaecologists and Obstetricians, Paediatricians, Social Scientists and Representatives of Women Welfare Organization as may be prescribed to discharge functions assigned under this Act.

(2) The Chairperson of the Board shall be appointed from amongst the members of the Board;

(3) The terms and conditions of appointment of the Chairperson and members of the Board shall be such as may be prescribed.".

5. In section 5 of the principal Act, in-section (1), the following provisos shall be inserted, namely:—

"Provided that if in the majority opinion of the Central Supervisory Board, continuance of pregnancy may involve a substantial risk in case the child is born with following abnormalities:—

(a) chromosomal abnormalities;
(b) genetic metabolic diseases;
(c) haemoglobinopathies;
(d) sex-linked genetic diseases;
(e) congenital abnormalities; or
(f) another abnormalities or diseases as may be specified by the Central Supervisory Board,

the pregnancy, irrespective of the length of pregnancy, shall be terminated in accordance with the provisions of section 4:

Provided further that if the pregnant woman irrespective of her age is a rape survivor, the pregnancy be terminated within twenty-seven weeks of such pregnancy in accordance with the provisions of section 4.".
STATEMENT OF OBJECTS AND REASONS

The Medical Termination of Pregnancy Act was enacted in 1971. Since its enactment, there have been spectacular socio-economic changes in the society. The lifestyle of the people has also changed considerably. Besides, technology in medical science has improved very much and there have been new techniques, which can detect foetal abnormalities in the advanced stage of pregnancy also. These techniques were not known or available when the Act was enacted in 1971.

In our country abortion is legal only up to twenty weeks of pregnancy under specific conditions and situations, broadly defined as the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury of physical or mental health, or 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.

Sometimes, it may happen that a defective child in the womb may cause substantial physical damage to the mother and it may result in death of the child or the mother. Therefore, it would be better if the abnormalities are detected and aborted in time with the latest technology.

Recently, the Supreme Court permitted a rape survivor to terminate her pregnancy at twenty-four weeks, which is beyond the permissible twenty weeks limit prescribed under the Medical Termination of Pregnancy Act, 1971. Their grounds were that continuing the pregnancy could greatly endanger her physical and mental health. In this instance, the Supreme Court directed the members of the appointed Medical Board to examine the petitioner and the viability of the pregnancy. The Board found that the foetus had multiple congenital anomalies and the severity of these anomalies posed a grave risk to the physical and mental health of the petitioner. Therefore, the Medical Board recommended that the petitioner be allowed not to continue the pregnancy. Based on these recommendations, the Supreme Court granted the petitioner permission to terminate her pregnancy.

This is not the first time that the Supreme Court has permitted a woman to abort a foetus older than twenty weeks. In 2015, the apex Court overturned a decision by the Gujarat High Court in a similar case. The Gujarat High Court had denied permission to a fourteen year-old rape survivor to abort her twenty-five week old foetus. Interestingly, while delivering its verdict, the High Court acknowledged the adverse physical, emotional and psychological implications of the decision on the petitioner's life, but ultimately chose to subscribe to the law. The girl then approached the Supreme Court, which recommended that a medical panel examine the girl and decide whether the termination of pregnancy was in her best interests; if the panel was in favour of the abortion, then the girl could go ahead with the termination.

There is a provision in the parent Act for termination of pregnancy if it is found that the continuance of the pregnancy would involve a substantial risk to the life of the women and the termination can be made at any time even in the advance stage, that is length of the pregnancy would not be a deciding factor. But, there is no provision for termination of pregnancy if the child to be born with abnormalities like genetics, severe heart diseases and likewise. Therefore, it is proposed that a suitable amendment to the parent Act be made so that pregnancy can be terminated even in the advanced stage if continuance of pregnancy involves a substantial risk of the child being born with certain specified abnormalities. However, it is also necessary to ensure that the termination
of pregnancy is conducted under the supervision of a Medical Board and that too in a designated place. Moreover, it is also required to ensure that if the pregnant woman is a rape survivor, the pregnancy be terminated without the supervision of any Medical Board but in a designated place within twenty-seven weeks of such pregnancy.

The Bill seeks to achieve the above objective.

NEW DELHI;


SHRIRANG APPA BARNE

January 22, 2018.
3. When pregnancies may be terminated by registered medical practitioners—

(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.

(2) Subject to the provisions of sub-section (4) a pregnancy may be terminated by a registered medical practitioner,—

(a) Where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or

(b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two 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 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 to be seriously handicapped.

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.

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

(4) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2) account may be taken of the pregnant woman’s actual or reasonable foreseeable environment.

(4) (a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

4. Place where pregnancy may be terminated — No termination of pregnancy shall be made in accordance with this Act at any place other than—

(a) a hospital established or maintained by Government, or

(b) a place for the time being approved for the purpose of this Act by Government or District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee:
Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson, as the Government may specify from time to time.

5. Sections 3 and 4 when not to apply—

(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code, the termination of pregnancy by a person who is not registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4, shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1 — For the purpose of this section the expression “owner” in relation to a place means any person who is the administrative head or otherwise responsible for the working of maintenance of a hospital or place, by whatever name called, where is pregnancy may be terminated under this Act.

Explanation 2. — For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.
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further to amend the Medical Termination of Pregnancy Act, 1971.

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