

Disposal of Fetal Remains and Post-Abortion Provisions

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Abstract: Abortion is considered as a matter of growing concern in recent times, demanding answers on various issues in the arena of reproductive rights of women. Till 1971, Abortion laws were governed vide Sections 312 to 316 of the Indian Penal Code, 1860 however being restrictive in nature was replaced by “The Medical Termination of Pregnancy Act, 1971” which envisaged a more liberal approach towards the same. Despite of legalizing abortion and having progressive legislations in that regard, India still witnesses a large number of unsafe abortions. The disposal of fetus is another crucial area which explicitly gets highlighted during discussion on this issue. The disposal of foetus is governed by Biomedical Waste Management Rules, 2016. Though the act made remarkable changes in the area, still failed to address the issue of Post Abortion disposal of fetus and Post Abortion Parental Consent raising many ethical issues. The Present Article mainly focuses its concern on the abovementioned aspects. The Article also highlights the causes and effects of Unsafe abortion with the required statistical data. It also revolves around certain aspects of Bio Medical Waste and Biomedical Management Rules with regard to the disposal of foetus. The Article further highlights the silence of the act on the issue of parental autonomy by making cross country comparison. The authors in the end of the article suggest measures which can be adopted to eradicate these issues.

Keywords: The Medical Termination of Pregnancy Act, 1971, Disposal of fetus, Unsafe Abortion, Parental autonomy, Bio Medical waste Management Rules, Registered Medical Practitioners.

1. Introduction

Abortion has always been a debatable and controversial topic in India and around the world. In ancient times abortion was considered as an act of taking away life. However, due to the recognition of women's Reproductive Rights, the recent approach towards abortion is liberalized, and the right to abort is considered a legal right. In India, a piece of social legislation was enacted in 1971, which opened the door for reforms in the field of reproductive rights of women, popularly known as the “The Medical Termination of Pregnancy Act, 1971” (The MTP Act of 1971).

Considering the history of the act, during the late 1860s abortion was criminalized making it an offense under section 312 of IPC, 1860 (1). The Central Family Planning Board on (25th August, 1964), at their 16th meeting recognized their concern on the increased number of illegal abortions performed in unhygienic conditions by inexperienced staff affecting physical and mental health of women and primarily suggested for the formation of a committee for the redressal of these issues. Hereinafter, under the aegis of Shri Shanti Lal Shah, the then Minister for Health, Law and Judiciary, Government of Maharashtra a committee was formed to determine the legalization of Abortion. Suggestions were invited from various authorities, Government and Public and the question of abortion was highlighted during the 4th meeting of CFP Council. The council was of the view that the provision under the Indian Penal Code, 1860 is restrictive in nature and thus recommended that it should be liberalised to allow termination not only for saving women's life but also if the continuance of pregnancy would be life-threatening or the born child would suffer health abnormalities or pregnancy results out of rape etc. They also made recommendations regarding the qualification of the person performing termination, the place, the consent of women etc. The committee has included in its recommendation points from the British draft bill on the issue. Moreover, threw light on the areas of repeated abortions, family planning and education. On the basis

of the said report a bill was passed by Rajya Sabha and Lok Sabha on 27th May, 1971 and 2nd August, 1971 respectively and took the shape of an Act after the Presidential assent on 10th August, 1971.

The act made remarkable changes in the field however the act is silent on the Post abortion disposal of foetus. Even though the government has issued general guidelines regarding the same they are not specific which might create confusion and hold the possibility of non-compliance. Post-abortion parental consent has not been addressed in the Act, which further raises ethical questions.

2. Hypothesis

- 1) The general guidelines prescribed under Biomedical Waste Management Rules, 2016 are effectively followed for the disposal of the aborted foetus.
- 2) The consent of women as mentioned under the provisions of the MTP act is given importance at the time of termination of pregnancy under the said act.

Instruments and Deployment

The following sources were referred:

- 1) Books / Journals
- 2) Online databases
- 3) Research publications and articles.

Data Analysis Techniques:

“Content analysis research” method was used to analyse the texts from the above-mentioned sources. Researcher used qualitative methods to analyse meanings of content within texts.

3. Results and Discussion

Abortion can be categorized broadly into 3 types: Firstly, Abortion which is carried out by the healthcare workers according to the methods suggested by the World Health Organization known as Safe Abortion. Secondly, Abortion which is carried out by trained providers but without using the methods suggested by the World Health Organization known as Less Safe Abortion and thirdly Abortion which is carried out by trained professionals using dangerous methods known as Least Safe Abortion.

Abortion, being a healthcare intervention and being regarded as a safe medical procedure when performed according to the methods suggested by the World Health Organization (WHO) that are pertinent for the gestational age and by trained medical professionals (2).

Furthermore the “pregnancies terminated voluntarily from a service provider”(3) are called Induced Abortions. During the early pregnancy stages the medical abortions can be self-managed in an effective and safe manner by pregnant women outside the ambit of the healthcare facility (such as at home).

Unsafe abortion according to the WHO is “a procedure for termination of a pregnancy done by an individual who does not have the necessary training or in an environment not conforming to minimal medical standards”(4). The global estimates suggest that nearly half of the 73 million abortions performed in the entire world every year are unsafe, along with 97% of unsafe abortions taking place in low- and middle-income countries (5). Abortions which are unsafe attribute to causes of life-threatening complications including hemorrhage, infection, and trauma with residual morbidity and often results into irreversible physical and mental health problems leading to long-term risk of depression, anxiety and post-traumatic stress disorders (6).

The Medical termination of Pregnancy Act of 1971 states that the termination of pregnancies can only be performed by registered medical practitioners (RMP) at certified facilities to provide abortion services to save a woman’s lives; to preserve their physical and mental health and in the cases of economic or a social necessity including the cases of incest, rape and fetal impairment; and, in the case of a contraceptive failures. Recently in 2021. The amended under the MTP Act further facilitated the ease and accessibility to safe legal abortion for all

married and unmarried women.

Even though abortions are legalized in India under various circumstances, India has large proportion of abortion which are unsafe inspite of having progressive legislations. As per the data collected by Indian National Family and Health Survey (NFHS-5) in the year 2019-2021 with the sample which included women aged 15-49 years it was analysed that the abortions which are performed at home commonly called as Self-managed abortions more prevalent in the women of lower socioeconomic strata, adolescent girls, and those accounting sex-selective reasons for abortion (7). Unsafe abortions tend to jeopardize the health of the women and is main contributor to maternal mortality. The major factors that contribute to women opting for unsafe abortion is mainly lack/absence of competent healthcare professionals, poverty, social inequality, lack of awareness and stigma attached to abortion.

Considering the general framework on disposal of foetus, the guidelines that need to be followed are the Biomedical Waste Management Rules, 2016. The Bio-Medical waste (8) can be defined as any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps, for disposal purposes fetus is considered as Bio-medical waste.

The disposal of fetus is crucial matter and if not properly disposed such type of waste can consequently harm environment and health of all living creatures and can also be infectious. According to Biomedical waste the category concerning to the disposal of human tissue comes under YELLOW (A) Human Anatomical Waste- which includes Human tissues, organs, body parts and fetus below the viability period as per the Medical Termination of Pregnancy Act 1971(9).

In India, if we consider the procedure of disposal of aborted tissue, it majorly is dependent on and changes with gestational age. The MTP Act is silent on the procedure for disposal of aborted foetus however, the medical clinics and hospitals who perform these abortions comply with the rules prescribed by the Bio-Medical Waste Management authorities, which specifically addressing treatment and disposal of products of conception within the viability period as given by the MTP Act either by deep burial or incineration.

If the gestation period exceeds 20 weeks and if the fetus weighs above 500g, the reason for the pregnancy to be terminated is to save lives of women or for an obstetric indication outside the purview of the MTP Act, it is the responsibility of patient's family for handling and disposal of the products of conception as per their religious practices, either cremation or burial.

The Part 2- (6) of the BMW Rules 2016, states the provision concerning Dead fetus, which is within the viability period as given by the MTP Act, 1971 can be considered to be included in the ambit of human anatomical waste. Such waste should be handed over in a bag of yellow colour accompanied with a copy of the certificate issued by the Obstetrician or the Medical Superintendent of the hospital or healthcare establishment to the operator (10).

In comparison with the scheme in the United Kingdom, where there exists a specific set of guidelines explicitly dealing with the disposing of the pregnancy remains resulting from loss of pregnancy or termination as prescribed under The Human Tissue Act 2004 (HT Act), it can be understood that no difference is being made between disposing of pregnancy remains and the disposing of other tissue from a living person. The pregnancy remains are still considered as tissue of the woman. According to the guidelines the ways of disposal are cremation, burial or incineration in certain circumstances. To perform incineration the woman must make a conscious choice or decision within the stated timeline and hospitals opinion should also be included (11).

It is noticed that in the cases of abortion, the participants do not give much consideration on the disposal methods and their major emphasis is mostly only on ending the pregnancy. There exists a popular assumption of appropriate disposal of the fetus. The Bio-Medical Waste Rules and the MTP Act, is silent on the issue of parental autonomy or the parental beliefs and requests of the remains of the fetus and proper dignified funeral and burial choices to the patients suffering from a miscarriage may prove beneficial for them.

Although the body of the fetus is tangible and much more than a human tissue still it is not considered to be

dead. In some circumstances, it is acknowledged as deceased fetus and is otherwise considered as a pregnancy product and the status is still not clarified. Several countries around the world follow the procedure of informed consent (12); after the process of disclosure of relevant information be it diagnosis, procedural risks, benefits, and alternatives to a competent patient, an educated and voluntary decision therefore can be made out. After the spontaneous abortion, informed consent must should include several discussions to be made on the available disposal options with the mother in a elaborative manner. Sometimes the formalities which label it as fetal deaths can contribute to the maternal psychological trauma if it does not align with the views of the mother (13).

The Primary Purpose of Act of 1971 known as the Medical Termination of Pregnancy Act is explicitly provided under its Preamble. The Preamble circumscribes for the termination of certain pregnancies by RMP's and for connected matters therewith or incidental thereof. Disposition of fetus and the Parental autonomy should be considered as matter incidental and connected thereto. The BMW rules are only concerned with the collection, labelling, storage, segregation of waste but does not seem to touch this aspect of the issue. The act speaks about the consent of women pre-abortion but there is no awareness on the option available regarding the fetal remains after occurrence of the spontaneous abortions that is Post-Abortion Consent.

Analysing the BMW rules, 2016 it is the duty of the hospitals to collect and segregate the waste according to the proper procedure and the disposal facility are not authorized to verify the contents of the bag or open the bag as per the rules laid down by the Central Pollution Control Board and must rely solely on the hospitals to have complied with the standard norms. There should be a unit in the Hospitals to deal with transparency in regard with the contents of yellow bag. The Viability period mentioned in the act should also be updated in the rules and properly informed to the Facilities working in this arena. The Certificate that needs to be provided along with the dead fetus must be scrutinized with more vigilance along with which the Parental autonomy should be given first preference. It can be analysed that there is the absence of stringent legal provisions that would ensure strict compliance with the disposal rules. Disposal of fetus being a matter of environmental concern should be dealt with sensitively, thus liability should be cast upon the occupier and the disposal facility to bring in deterrent effect and further deal with issues related to this arena which will reduce malpractices concerning the treatment and disposal of aborted fetus along with providing special attention to the same. hypotheses were formulated to examine the correlation between students' perceptions of their computing abilities, while an additional hypothesis was developed to assess the efficacy of the GFP in achieving the intended learning objectives. These hypotheses were subsequently assessed based on survey and evaluation findings.

4. Limitations

One limitation of the above research could be the scope of analysis. The research may focus primarily on the legal and regulatory aspects of biomedical waste management and post-abortion consent, potentially overlooking other important factors such as cultural norms, socioeconomic disparities, and regional variations in healthcare infrastructure. Additionally, the research may rely on secondary data sources, which could limit the depth of understanding and overlook real-world complexities. Moreover, the perspectives of key stakeholders, including healthcare providers, policymakers, and affected communities, may not be adequately represented, leading to potential gaps in the analysis

5. Future Scope

1. Comparative Analysis: Conducting comparative studies between regions or countries with different biomedical waste management practices and post-abortion consent regulations to identify best practices and areas for improvement.
2. Qualitative Research: Conducting in-depth interviews or focus group discussions with healthcare professionals, policymakers, and women who have undergone abortions to understand their perspectives, experiences, and preferences regarding biomedical waste disposal and post-abortion consent.
3. Policy Analysis: Analysing the impact of proposed amendments or reforms to existing regulations, such as the Medical Termination of Pregnancy Act, on patient rights, healthcare delivery, and waste management practices.

4. Ethical Considerations: Exploring the ethical implications of biomedical waste disposal methods, including incineration, burial, and sterilization, considering environmental sustainability, public health risks, and cultural sensitivities.

5. Public Awareness and Education: Investigating the effectiveness of public awareness campaigns and educational initiatives in promoting responsible waste management practices and enhancing understanding of patient rights and consent in reproductive healthcare.

6. Longitudinal Studies: Conducting longitudinal studies to assess the long-term effects of regulatory changes and interventions on biomedical waste management practices, environmental outcomes, and patient satisfaction.

7. Intersectional Analysis: Examining the intersectionality of factors such as gender, socioeconomic status, and geographic location in shaping access to safe and dignified abortion services and equitable waste management solutions.

By addressing these areas, future research can contribute to enhancing regulatory frameworks, promoting ethical healthcare practices, and safeguarding the rights and well-being of women, healthcare providers, and communities

6 Conclusion

The research concludes that while the Bio Medical Waste Management Rules, 2016 provide guidelines for fetal disposal, and their efficiency depends on various factors including implementation, infrastructure, and ethical considerations. There is a need for continuous monitoring and improvement to ensure effective management of biomedical waste, including fetal disposal, to safeguard public health and the environment. Regarding the requirement of post-abortion consent within the Medical Termination of Pregnancy Act, 1971, the research highlights the importance of considering patient autonomy and informed decision-making in reproductive healthcare. Future studies should explore the implications of integrating post-abortion consent processes into existing legal frameworks, considering ethical considerations and potential impacts on healthcare delivery and patient outcomes.

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