

Review Article

MTP beyond 20 Weeks: Legal V/S Medical Dilemma

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Abstract:

Under the Medical Termination of Pregnancy Act, 1971, termination of pregnancy on certain grounds is permitted till 20 weeks of gestation. Sometimes, cases are reported for termination of pregnancy beyond this period although falling under the permitted grounds as per the Act, thus putting the medical professionals as well as the law courts in dilemma over the options. In the absence of the required amendments in the Act, it becomes moral, ethical and professional duty for the medical professionals and legal responsibility for the courts to act in the best interest of the pregnant female as well as the child in the womb. Keeping in view the various court judgments and directions, it can be easily concluded that medical professions are required to be proactive toward pregnant female and they have should have judicial protection if decisions are taken in good faith.

Key Words:

MTP Act, 1971, Medical Board, Abortion, Arnold Chiari Type II Syndrome, Foetus, Down Syndrome, Apex Court.

Introduction

The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971) is an Act in India to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Under the Act, abortion has been liberalized in India and is permitted on certain grounds but all the indications are applicable only up to 20 weeks of pregnancy. Above 20 weeks, the pregnancy can be terminated only on therapeutic considerations for the mother when continuation of the pregnancy is likely to involve a risk to the life of the mother i.e. as an emergency pregnancy can be terminated irrespective of its duration if such opinion is formed in good faith that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

However, situations have been witnessed and are being witnessed wherein cases of pregnancy beyond 20 weeks of gestation are being reported for

termination under various legal grounds and have become a real challenge and dilemma for the medical professionals and the law courts to take decisions in the interest of the pregnant female. Two such cases dealt in Rajindra Hospital, Government Medical College Patiala are being discussed in the light of various Court judgements and directions on termination of pregnancy beyond 20 weeks of gestation:-

Case No. 1:

A pregnant female aged 39 years was examined by the medical board of Rajindra Hospital, Government Medical College Patiala on 20.08.2019 with a unanimous opinion that the pregnancy has crossed 24 weeks period of gestation. The ultrasound report showed abnormal development of fetal brain which will result in birth of the baby with future bodily abnormalities and physical handicap as well as grave injury to the mental health of the mother as well as of the family. Keeping in view the said

circumstances and facts, MTP in this case was advised and recommended but under directions from a competent court of law.

Later on, the Punjab and Haryana High Court in the Civil Writ Petition No. 26852 of 2019 [2] filed by the pregnant female, directed for termination of pregnancy under the supervision of the Head of the Department of Obstetrics and Gynaecology in accordance with the recommendation of the Medical Board with clear opinion that it would be difficult for the Court not to accept the recommendations made by the duly constituted Medical Board and to take a different view in the matter, and on the date of the directions given by the Court i.e. 20.09.2019, the pregnancy had already crossed 31 weeks gestation in this case.

Case No. 2:

On the directions of a local Court in Patiala [3] a pregnant female aged 29 years was examined by the Medical Board on 27.11.2019 in Rajindra Hospital Patiala which recommended termination of pregnancy without any delay under the supervision of senior gynaecologist of the hospital. At the time of examination by the Medical Board, the pregnancy in this case was about of 23 weeks of gestation i.e. had crossed the legal limits of 20 weeks and as per court documents, the child in the womb was having defective kidneys and would not survive in future, if given birth.

In this case, the court emphasized that the provisions of MTP Act do not contemplate authorization or approval from the Court, in fact whenever a matter concerning medical termination of pregnancy of any ground whatsoever comes before the Court, then the Court has to invariably base its decision upon the opinion of the Medical Board. The Courts should be proactive in such matters and in the eventuality of filing of such applications instead of technical dismissal of the same, plea of the woman should be forwarded to the Medical Board for an appropriate action immediately.

Discussion

Abortion in India is legal in certain circumstances. It can be performed on various grounds until 20 weeks of pregnancy. In exceptional cases, a court may allow a termination after 20 weeks.

There are cases of diagnosed foetal abnormalities and cases of women who are survivors of sexual abuse and have reached out to the Courts with request for termination of pregnancy beyond 20 weeks. [4] Listed below are some of the significant cases with requests for late term termination that have come to the Court for permission. [5]:-

- a. In December 2017, a 13-year old rape survivor's father approached the Bombay High Court seeking permission for the termination of 26-week foetus. The girl was repeatedly raped by her cousin. Considering the report of the medical board which claimed that there was greater risk to the pregnant girl's life if continued. The Court held that the girl was physically incapable to deliver a child, and granted permission for termination.
- b. A 15-year-old girl, who had eloped to marry, sought permission from the Delhi High Court to abort her 25-week pregnancy. The medical board assigned to examine her case, however, reported that termination would pose serious risks to the lives of both the foetus and the mother. Subsequently, the High Court denied the girl permission to undergo an abortion.
- c. A woman from Thane approached the Bombay High Court in December 2017, seeking permission to terminate her 22-week old foetus that was diagnosed as suffering from various infirmities. The report of the medical committee ascertained that the child, if born, may suffer from mental retardation, while admitting that terminating the pregnancy at this stage would be risky. After the petitioner expressed her willingness to take the risk, the Court permitted her to undergo abortion.
- d. After the foetus of a 24-year-old woman from Pune was diagnosed with a cardiac anomaly, she approached the Bombay High Court seeking permission to abort her 24-week foetus. The medical board asked to examine the woman advised abortion while reporting that the child, if born, may have to undergo multiple surgeries. The Court consequently, granted permission for the abortion.

- e. In November 2017, a woman approached the Bombay High Court for permission to terminate her pregnancy in 26th week of gestation on grounds of skeletal and neurological abnormalities. Further to the opinion of the medical board constituted by the court, she was granted permission to terminate her pregnancy due to fetal abnormalities incompatible with life.
- f. Foetuses of two women, in their 29th and 30th week of pregnancy were both diagnosed with suffering from Arnold Chiari Type II syndrome. Based on the report of JJ Hospital in Mumbai, the Supreme Court in October 2017 held that both foetuses were identical and that the continuation of pregnancy would harm both, thereby permitting the termination of pregnancy for both women.
- g. In another incident in October 2017, a minor rape victim in her 23rd week of pregnancy had approached the Jharkhand High Court for permission to abort her foetus. While the medical board set up to examine the matter observed that it would be dangerous to abort at this stage, the board took it up as a challenge. The Court permitted the termination of pregnancy, and directed the government to make arrangements for the stay of the victim's parents.
- h. In October 2017, a 16-year old's father had approached the Punjab and Haryana High Court to seek permission for the termination of her 26-week pregnancy that resulted from rape. The Court, following the report of the medical board that stated the abortion can be undertaken with the understanding that it involves risks, allowed the abortion and directed the board to carry out the necessary procedures.
- i. The mother of a 19-year-old girl suffering from mild to moderate mental retardation had approached the High Court of Himachal Pradesh in October 2017 for permission to terminate the girl's 32-week pregnancy. The medical board constituted by the High Court observed that if the pregnancy were continued, the foetus would suffer severe cognitive and motor impairments even after surgery. The Court therefore granted permission for the termination of the pregnancy.
- j. In September 2017, the mother of a 13-year old rape survivor moved the apex court for permission to terminate her 32-week pregnancy. The Supreme Court permitted the abortion citing that it was a result of sexual abuse and the victim did not want to carry on with it, despite opposition from the Centre that argued that the pregnancy was too advanced.
- k. In September 2017, a woman in her 31st week of pregnancy sought permission to terminate her pregnancy as both kidneys of the foetus were found to be not functioning. Noting that the continuation of pregnancy will cause more mental anguish to her, the Supreme Court granted her permission.
- l. A 17-year rape victim approached the Karnataka High Court in September 2017 seeking permission to terminate her pregnancy that had exceeded 20 weeks, arguing that she will suffer mentally if she had to deliver her baby at such a young age. The Court, however, rejected the plea following the report of the medical board that suggested that termination of the pregnancy would not be good for the girl and the foetus.
- m. In August 2017, a 20-year-old woman from Pune approached the Supreme Court, seeking permission to abort her 24-week foetus that was diagnosed as having no skull. After the medical board reported that there was no treatment possible for the condition, the Supreme Court granted permission for the termination of the pregnancy.
- n. In July 2017, the 24-week foetus of a 21-year-old woman from Mumbai was diagnosed with mental abnormalities. Following this, renowned gynaecologist Dr. Nikhil Datar helped the husband of the woman file a petition in the Supreme Court, to allow her to undergo an abortion. The Supreme Court granted the permission.
- o. In June 2017, a Kolkata-based woman filed a petition in the Supreme Court, challenging Section 3 of the MTP Act which denies

- permission to abort the foetus beyond 20 weeks of pregnancy. The woman discovered that her foetus had congenital defect when she was 23 weeks pregnant, and had crossed then 20-week benchmark within which it is legal to terminate a pregnancy. The Supreme Court in response, appointed a medical board of seven senior doctors in Kolkata, directed it to examine her. The apex court has called for a need to amend the MTP Act, to make it more "meaningful".
- p. In May 2017, a medical board of eight doctors referred the case of a 10-year old pregnant girl who was raped by her stepfather, to the city court in Haryana. The board was unsure of the gestation, and concluded that it could be between 18 - 22 weeks. The city court advised the board to choose one of two ways – either to go ahead with the abortion by considering it to be below 18 weeks, or "wait for the pregnancy to complete its full term if they feel the unborn child has surpassed the age cap". Following this, the board decided to go ahead with the abortion.
 - q. In May 2017, a 16-year old rape survivor and her father approached the Gujarat High Court seeking permission to abort her foetus that had grown beyond 20 weeks. The Court allowed the teen to undergo abortion, citing that the abortion was not likely to endanger the life of the girl based on the medical opinion of a doctor.
 - r. In May 2017, an HIV-positive destitute rape victim approached the Patna High Court with a plea to terminate her pregnancy. After the High Court turned down the plea, saying that "it was a compelling responsibility of the state to keep the child alive", the Supreme Court was approached. The apex court then granted permission to abort the now 26-week old foetus, directing an AIIMS medical board to examine her. It stated that "a woman, who has already become a destitute, being sexually assaulted and suffering from a serious ailment, should not go through further suffering. The quintessential purpose of life is the dignity of life and all efforts are to be made to sustain it.
 - s. In April 2017, the mother of a 16-year old rape victim in Madhya Pradesh approached the Indore bench of the High Court seeking permission for the termination of her daughter's 33-week pregnancy. The plea was rejected by the bench, arguing that the "foetus was grown and an abortion was unjustified".
 - t. In February 2017, a 37-year-old woman in her 27th week of pregnancy approached the Supreme Court for permission to abort her foetus that was found to be suffering from Down Syndrome. After the medical board appointed by the Court advised against an abortion, the apex court denied her permission to terminate the pregnancy, citing that the baby could be "born alive" if the pregnancy was allowed to continue, while admitting that it was "very sad for a mother to bring up a mentally retarded child". The foetus was detected with a rare abnormality called the Arnold-Chiari malformation, where the brain and spinal cord connect.
 - u. In January 2017, a 22-year-old woman sought permission from the Supreme Court to abort her 24-week foetus on medical grounds. Further to the medical board's report which revealed that the foetus was without scalp with bleak chances of survival, posing a threat to the life of the woman, the apex court granted her permission to undergo abortion.
 - v. In July 2016, a 26-year old rape victim approached the Supreme Court seeking permission to terminate her 24-week pregnancy, as the foetus was detected with Anencephaly, a condition whereby most part of the brain, skull and scalp is missing. The medical board, after having examined her on the directions of the Supreme Court, declared that the woman's life was in danger. The apex court then granted her permission to abort the foetus.
 - w. In February 2016, an 18-year old rape victim sought permission from the Gujarat High Court to abort her 24-week foetus after having unsuccessfully attempted suicide by consuming acid. The panel of doctors submitted their report, following which, the High Court granted permission, citing that the continuation of the pregnancy "may result in a grave injury to her mental health."

In all these cases, the Apex Court as well as various other courts, have allowed termination of pregnancy beyond 20 weeks and even up to 32 weeks under various grounds under the MTP Act i.e. without consideration of the length of pregnancy but acting in accordance with the recommendations of the medical boards.

However, the provisions of MTP Act do not contemplate authorization or approval from the Courts in such cases. In fact, whenever a matter concerning medical termination of pregnancy of any ground whatsoever comes before the Court, it has to invariably base its decision upon the opinion of the Medical Board.

The Courts are proactive in such matters and plea of the affected women is being taken on priority for an appropriate action immediately. The Medical Boards have complete should have judicial protection in the light of above noted court decisions to go ahead with termination of pregnancy beyond 20 weeks of gestation on the grounds under the MTP Act taken in good faith without referring the cases to courts because it not only delays the pregnancy termination procedure but also aggravates the mental trauma of the pregnant female and the family by way of further embarrassment and monetary losses and at the same waste of the precious time of the courts which are already overburdened.

There should not be any ambiguity on the Medical Board recommendations for termination of such pregnancies under the Act when drafted clearly making reference of the already issued directions by the Apex Court and other higher courts in similar cases till the law is suitably amended as desired by the Apex Court.

The Punjab and Haryana High Court in Civil Writ Petition No. 6733 of 2016 has also, given direction that the Central Government is advised to consider making amendments to the Medical Termination of Pregnancy Act, 1971 and clarify in so many words to the doctors that they will not be unnecessarily prosecuted if they act in accordance with the rules in good faith to save the life of a victim of rape or to prevent grave injury to her physical and mental health [6].

Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high

character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention [7].

The very purpose of the legal grounds under the MTP Act becomes futile and meaningless if termination of pregnancy is denied solely on the basis of the legally prescribed limit of 20 weeks of gestation provided there are compelling and reasonable justifications for recommendation against termination of such pregnancies because the consequences of the outcome will remain unaltered.

Conclusions:-

- The provisions of MTP Act do not contemplate authorization or approval from any court for termination of pregnancy even after 20 weeks of gestation. On the contrary, the very exercise of approaching the courts in such situations results in unnecessary wastage of time and, many a times, renders them remedy sought unavailable to the victim.
- Some abortions are necessary beyond the statutory limit in the light of circumstances under which they are sought and, therefore, it is required to streamline the system in this regard by making amendments to the Medical Termination of Pregnancy Act, 1971.
- The medical professionals dealing with medical termination of pregnancy cases should have complete judicial protection in the light of various court decisions to terminate pregnancy beyond 20 weeks of gestation on the grounds under the MTP Act taken in good faith without referring the cases to the courts.

Conflict of Interest: None

References:

1. Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971)
2. Civil Writ Petition No. 26852 of 2019, Seema Rani & Another Versus Union of Punjab & others.
3. Dr. Deepati Gupta
4. BBC News Asia, 6 September 2017: India Supreme Court allows rape victim, 13, to terminate pregnancy.

5. Abortion in India; From Wikipedia, the free encyclopaedia: Recent court cases for late-term termination of pregnancy.
6. Punjab and Haryana High Court Civil Writ Petition No.6733 of 2016
7. Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002; "Duties of Physicians to their patients: Obligations to the Sick."

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