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Guest Article

Navigating the MTP Act in Clinical Practice

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Summary

The MTP Act (1971) a regulatory enactment now three decades old, is a privilege and a responsibility bestowed on the medical profession in general and gynecologists in particular. It empowers them to promote and protect the reproductive health of women, by giving them the option of safe abortion without having to suffer legal encumbrances. Being a legal document it is important to peruse and understand every mandatory requirement and nuance so as to adopt safe, legally defensible clinical practices. While most medical practitioners have a fair impression of the MTP Act, few have actually had an in depth study. This presentation is an overview of this legal document, with an interpretation and reiteration of important points which may have vital implications for clinical practice.

The Medical Termination of Pregnancy Act, 1971

The MTP Act (Act No. 34 of 1971) has been defined in its opening lines as 'An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto'.

Legislated by Parliament on August 10, 1971, this central act was passed to extend to the whole of India except the state of Jammu and Kashmir and to be enforced across the country from 1st April 1972. In 1980 Jammu and Kashmir (and Mizoram) also adopted the MTP Act. However it is still not applicable in Sikkim and Lakshadweep.

The purpose of this act was to define the situations and circumstances in which safe abortion could be legally performed and to empower medical practitioners and institutions delivering this service.

There is ample evidence that allowing abortion on liberal grounds reduces maternal morbidity and mortality (Mundigo and Indriso 1999). Approximately 25 per cent of the world's population lives in countries where abortion is illegal without exception or is permitted only to save the life of a pregnant woman (Pandit and Dalal 1999). While only 22 per cent of the 190 countries in the world have laws allowing abortion on request, the Indian MTP Act with its acceptance of socio-medical indications rates amongst the most liberal.

Background Scenario

It was to stem the high maternal morbidity and mortality associated with illegal abortions that the Government of India set up the Shantilal Shah Committee, which after deliberating a wide range of evidence over 2 years recommended a broadening and rationalisation of laws related to abortion in 1966.

Based on these a MTP Bill was introduced in the Rajya Sabha in 1969, was referred to a Select Joint Committee Review and finally passed as the MTP Act in 1971.

The MTP Act – A Protective Umbrella

Even today voluntarily 'causing miscarriage' to a woman with child – other than in 'good faith for the purpose of saving her life' is a crime under Section 312 of the Indian Penal Code (IPC), punishable by simple or rigorous imprisonment and / or fine.

Consequent sections (IPC Sections 313 – 316) relating to causing miscarriage without a pregnant woman's consent or causing maternal death due to the procedure, are stricter, with punishments ranging from up to 10 years imprisonment and extending up to life imprisonment (Chhabra and Nuna 1994).

Implication

The MTP Act if adhered to completely, offers full protection to the medical practitioner from any of the above mentioned consequences of the IPC. However this legal protection is only available, conditional to every requirement of the act being fulfilled.

MTP Act, MTP Rules and MTP Regulations

The MTP Act is an Act of Parliament providing a broad overview of the methodology of safe abortion practice and defining and delegating authority to central and state governments to make rules and regulations.

The MTP Rules are framed by the Central Government, but must be placed before each House of Parliament for ratification.

The MTP Regulations are framed by State Governments and relate to issues involving opinions for termination, reporting and maintaining secrecy.

Implication

The importance of these three distinct entities, is the possible flexibility in introducing or modifying rules and regulations within the ambit of the act, without having to steer amendments through Parliament. The legislated sharing of regulatory powers is testimony to the sharing of responsibility between the Central and State Governments on health related issues.

When Pregnancies may be Terminated

A registered medical practitioner (RMP) is protected under law if a pregnancy is terminated in accordance with Section 3 of the MTP Act based on opinion formed in good faith.

Duration of Pregnancy

According to Section 3 – Sub section (2) of the MTP Act

1. A pregnancy not exceeding 12 weeks may be terminated with the opinion of a single medical practitioner
2. A pregnancy exceeding 12 weeks but not exceeding 20 weeks requires the opinion of not less than two medical practitioners.

Implication

Any induced abortion performed after 20 weeks is unprotected by the umbrella of the MTP Act. It is considered an illegal abortion, unless it deemed immediately necessary to save maternal life as per Section 5 of the Act.

Grounds for Termination

According to Section 3 – Sub section (2) of the MTP Act a pregnancy may be terminated for the following indications alone

1. If the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical and mental health.
2. If there is a substantial risk that if the child were born, it would suffer physical or mental abnormalities as to be seriously handicapped

Explanations I and II further clarify the indications

1. Pregnancy alleged by the pregnant woman to have been caused by rape.
2. Pregnancy resulting from a failure of any device used by any married woman or her husband for the purpose for limiting children.

Implication

It is important to note that the MTP Act does not permit induced abortions on demand, which is often a common misconception with patients and clinicians. The responsibility to judge the necessity and indication rests with the medical practitioner to opine in good faith regarding the presence of a valid legal indication.

Valid Legal Consent

Section 2 – Sub section (4) of the MTP Act Section 3 – Sub section (2) of the MTP Act mandates the presence of a valid legal consent.

1. Termination of pregnancy in minors (under 18 years age) (as defined by the Indian Majority Act, 1875) or lunatics (as defined in Section 3 of Indian Lunacy Act, 1912) only with consent in writing of guardian.
2. Termination of pregnancy in adult women over 18 years age permissible with their valid consent.

Implication

The consent must be informed and recorded in Form C recommended in Rule 8 of MTP Rules. An adult woman requires no other persons consent under law except her own.

It is important to be alert to possible misrepresentation of age by a minor as such a consent has no legal standing, since a minor cannot knowingly or unknowingly enter into a legal contract. Documentary proof of age should be sought whenever the clinician has the slightest doubt.

Where Pregnancies may be Terminated

According to Section 4 of the MTP Act pregnancies may only be terminated in the following settings.

1. A hospital established or maintained by the Government.
2. A place approved for the purpose of the Act by the Government.

For approval Rule 4 of the MTP Rules further elaborates on the Clause 2 mentioned above as follows

1. The Government should be satisfied with safety and hygiene.
2. The following facilities should be provided.
   - An OT table and instruments for abdominal and gynecological surgery.
   - Anesthetic, resuscitation and sterilisation equipment.
   - Drugs and parenteral fluids for emergency use.

The application for approval should be made in Form A to the Chief Medical Officer of the district who should be provided with facilities to inspect the place. Approval is then recommended to the Government which will finally issue a certificate of approval in Form B. This certificate should be prominently displayed at the recognised centre.

While approval once granted is not time bound Rules 5, 6 and 7 of the MTP Rules have a provision for allowing random inspection of maintenance of facilities with powers to recommend cancellation or suspension of approval if deficiencies are reported. However a [illegible] day grace period is allowed in which a review of the decision may be requested.

Implication

Any procedure performed in a centre which does not have government approval is deemed illegal. Hence each centre must exercise itself individually or in tandem with other centres to be recognised before offering induced abortion services.

By Whom Pregnancies may be Terminated

The necessary qualifications of a medical practitioner registered in the State Medical Register are broadly defined in Section 2 – Clause (d) of the MTP Rules.

1. Postgraduate degree or diploma in gynecology and obstetrics.
2. Registered before commencement of the Act with over 3 years experience in the practice of obstetrics and gynecology.
3. Registered after commencement of the Act if
   - Six months of house surgeonship in gynecology and obstetrics.
   - Experience in any hospital of over 1 year in the field of gynecology and obstetrics
   - Assisted on performing 25 MTPs in a government hospital or a recognised training institute

Implication

While medical practitioners with postgraduate training or qualifications in gynecology and obstetrics stand automatically recognised, there is great scope to train registered medical practitioners in safe abortion techniques at recognised training centres. This could dramatically increase the access to and availability of safe abortion nationwide.

Documentation and Records

According to Regulation 5 of the MTP Regulations all approved centres are required to maintain an Admission Register in the format prescribed in Form III. A fresh register is started each calendar year, with new serial numbers generated by mentioning the year against the serial number.

The Admission Register is a secret document

and should be kept in safe custody. Its contents may only be disclosed in response to formal inquiries from any of the following

1. Secretary to the Government for a departmental inquiry
2. Magistrate of First Class for investigation into an offence
3. Court of Law in whose jurisdiction the centre lies, in case of suit or action for damages.
4. Explicit request and application from the woman herself (though not specified in the regulations) may be considered valid grounds.

The Admission Register should be maintained for at least 5 years from the last entry.

Implication

The importance of meticulous documentation has become even more significant in today's medico-legally charged environment, requiring additional effort and attention. Prompt and sincere reporting is an important responsibility since it contributes to national databases while simultaneously underlining the legality of the procedures.

Protection of Action taken in Good Faith

The MTP Act in Section 8 protects the registered medical practitioner from suits or other legal proceedings for any damage caused or likely to be caused by anything done in good faith under the act.

Section 52 of the IPC defines good faith as adequate and due care, a legal definition that is suitable for medico legal use.

Implication

This last section of the MTP Act has far reaching implications, as it is the foil protecting a medical practitioner diligently functioning within the boundaries set by the MTP Act, MTP Rules and MTP Regulations, from being prosecuted under the IPC or even potential civil or consumer court action. Of course this protection is conditional to judicious fulfilment of all the legal and statutory mandates and requirements.

Recommendations to Overcome Shortcomings

Though fairly liberal in its mandate, the MTP Act includes several restrictions some of which have become counterproductive to enhancing easy accessibility to safe abortion (Pachauri 2000).

1. Abortion procedures can only be performed by doctors qualified in gynecology or by those who have received training in performing MTPs. Unless training facilities are increased manifold this restriction impedes widespread availability. The most important strategy to make abortions safe is to increase the number of trained persons who can do the job (Bhatt and Golani 2001).
2. Opinion of two qualified medical practitioners is required for pregnancies between 12 and 20 weeks. Since there is no difference in the clinical responsibility of decision making during the first or second trimester, this requirement has now become a mere formality and could be dispensed with
3. The MTP Act allows termination only up to 20 weeks. In view of recent advances in prenatal diagnosis a number of birth defects, structural and genetic are diagnosed around this time. A qualified extension of up to 22 weeks may help conveniently accommodate these indicated terminations.
4. Certification procedures for facilities are cumbersome and bureaucratic and have become the main hurdle to expanding safe abortion services through the private and NGO sectors. A FOGSI Questionnaire on MTPs in clinical practice elicited 118 responses. While 28.8% centres reported easy recognition 12.7% were recognized after delays from 1 to 7 years. 44.1% reported difficulties in navigating the recognition process, while 11.9% of respondents were unaware of the need for centre recognition (Sheriar 2000). There is scope to simplify and streamline bureaucratic procedures by amending MTP Rules and Regulations. Meanwhile clinicians should exert themselves to register their centres by meticulous application and persistent follow up with local health authorities. Simultaneous lobbying as a group, backed by the local obstetric and gynaecological society and the MTP Committee of FOGSI could help facilitate registration.
5. Registration formalities are no different for centres offering first or second trimester MTPs. When performed in early pregnancy by well trained practitioners in adequate facilities, abortion has an excellent safety record (IPPF 2001). There is hence a valid case for bifurcating recognition for performing first trimester MTPs from second trimester MTPs particularly in view of the documented safety and simplicity of early induced abortions with the resurgence of technologies such as manual vacuum aspiration. This measure would greatly contribute to a widespread increase in safe abortion services
6. The MTP Act exclusively addresses clinic hospital based provision of induced abortions. With the availability of medical methods which can be administered on an outpatient basis, the act needs to

be updated to keep abreast with these and future medical advances.

Conclusion

The MTP Act of 1971 has been beacon of landmark social and medical legislation with far reaching positive benefits for the Reproductive Health of Women. It is an empowering act for the healthcare system and its beneficiaries, setting aside the application of the Indian Penal Code in certain well defined socio-medical situations.

Unfortunately its full potential has yet to be realised mainly due to logistic difficulties to making safe abortion facilities more widely available. Even so the MTP Act in its present form, with some fine tuning of MTP Rules and Regulations, is quite adequate to achieve our goal of Safe Abortion. Maybe it is now time to revisit, reevaluate and revalidate the MTP Act, Rules and Regulations in today's context.

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