

>15.00 hrs.

Title: Discussion on the Medical Termination of Pregnancy (Amendment) Bill, 2002. (Bill passed)

THE MINISTER OF STATE IN THE MINISTRY OF HEALTH AND FAMILY WELFARE (SHRI A. RAJA): Sir, in 1971, the Parliament enacted the Medical Termination of Pregnancy (MTP) Act, 1971 to legalise termination of pregnancy on broad socio-medical grounds in order to eliminate illegal and unsafe abortions by untrained persons and in unhygienic conditions and thereby reduce maternal morbidity and mortality in the country.

The circumstances under which Medical Termination of Pregnancy (MTP) can be performed, the places where it can be conducted; the qualifications, experience and training of personnel who can conduct the MTP, the conditions for approving places, and recording and reporting procedures, etc., are specified under the MTP Act, 1971 and the MTP Rules and Regulations of 1975.

The Medical Termination of Pregnancy Act accords primacy to the rights of women and has been in existence for thirty years. Some of its provisions need to be reviewed both in the context of significant changes in the socio-economic scenario, and the development of medical technology and services. Therefore, regulation of legal/safe abortions in a more effective manner is the need of the hour.

In June 1997, the Government of India reviewed the MTP Act, 1971 to make it more relevant to the present environment. The National Commission for Women had also suggested certain amendments to the Act. These suggestions and reviews were considered by an expert group constituted under the Chairmanship of Secretary, Family Welfare. On the basis of some of the recommendations of the National Commission for Women and the experience gained in the implementation of the MTP Act, the expert group suggested that certain amendments to the MTP Act, 1971 have become necessary.

15.03 hrs (Mr. Deputy-Speaker *in the Chair*)

The Indian Lunacy Act has been replaced by the Mental Health Act, 1987. Definition of 'lunatic' as provided under the Mental Health Act, 1987, is 'mentally ill person'. The expression 'lunatic' appearing in clause (b) of section 2 of the MTP Act, 1971, needs, therefore, to be brought in line with the existing law.

The existing provisions of section 4 (a) (b) of the MTP Act provide that no termination of pregnancy shall be made in accordance with this Act at any place other than:

- a. a hospital established or maintained by the Government; or
- b. a place for the time being approved for the purpose of this Act by the Government.

Thus, for the purpose of approving the place where medical terminations of pregnancy can be done, the power lies with the State Governments. Experience has shown that centralising the powers to approve places as MTP centres at the State level has resulted in inordinate delay in dealing with the applications for recognizing MTP centres. This has resulted in discouraging even the well-equipped centres to seek a legal status. With a view to simplifying procedures and liberalising conditions for sanctioning MTP facilities in the States, it is now proposed that powers for granting approval may be delegated to the Government-constituted district level committees headed by Chief Medical Officer/District Health Officer, which will comprise three to five members including the district gynecologist/surgeon and other members drawn from the medical profession, non-governmental organisations and *panchayati raj* institutions.

Although abortions were made legal in 1971, actually illegal abortions still outnumber legal abortions by a large margin. It is estimated that 10-15 thousand women die every year due to complications resulting from unsafe abortions conducted at unapproved places by untrained providers. One of the weaknesses of the MTP Act, 1971 is that it does not prescribe specific punishments for abortion conducted illegally by persons who are not registered medical practitioners as defined under the Act and in hospitals and clinics not approved for conducting MTPs. The 1971 MTP Act only reiterates, that all the offences under the Act are punishable under the appropriate provisions of IPC. Though there are relevant sections in the Indian Penal Code, which prescribe punishment for various offences connected with performance of abortion, those committing the categories and types of offences as mentioned by me still escape punishment. The penal provisions of IPC are, therefore, not adequate in the present situation.

It has, therefore, been proposed to amend sub-section (2) of Section 5 of the MTP Act, 1971 to prescribe punishment for owners of clinics, which are not authorised to conduct abortions and the persons who are not registered medical practitioners as defined under the Act even if they conduct MTPs at approved places.

It is also proposed to penalise providers who may be registered medical practitioners as defined under the Act – cases where they conduct MTPs at unapproved places. The punishment prescribed for all such cases will be rigorous imprisonment of not less than two years, which may extend to a maximum of seven years.

For these reasons, it is proposed to amend Sections 2, 4 and 5 of the Medical Termination of Pregnancy Act, 1971.

Therefore, Sir, I move:

"That the Bill to amend the Medical Termination of Pregnancy Act, 1971, as passed by Rajya Sabha, be taken into consideration. "

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill to amend the Medical Termination of Pregnancy Act, 1971, as passed by Rajya Sabha, be taken into consideration."

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Sir, I rise to support this Bill. But, at the same time, I have to draw the attention of the Government to certain important areas.

The new definition wants to say that the word "lunatic" is to be replaced by the words "mentally ill person." But, at the same time, in the subsequent explanation, in clause (b) it is stated:

" "mentally ill person" means a person who is in need for treatment by reason of any mental disorder other than mental retardation."

This particular subjective thing makes certain people excluded from the benefit of this definition. It means that the mentally retarded persons cannot get the benefit. Many mentally retarded girls are there. When they become pregnant, they cannot get the benefit of it. They have to be supported by the guardian only. They have to get the consent of the guardian. But now that has been excluded. By this, a lot of ladies are going to be put into trouble when they are mentally retarded, when they are admitted into the hospital for the termination of pregnancy. Therefore, it has to be considered and the explanation should be given in a better way. If possible, in the rule-making provision, it should be explained in a better way so that there should not be any trouble for the people who are mentally retarded.

In the same way, I would like to draw the attention of the House to clause 4 where it has been said:

"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 a District Level Committee constituted by that Government with the Chief Medical Officer or District Health Officer as the Chairperson of the said Committee."

The term "for the time being approved for the purpose of this Act by Government" should also have some leniency to give it to the other people who are having clinics or nursing homes or any health centres at the mofussil or rural areas.

The hon. Minister has admitted that about 15,000 ladies are dying due to the wrong approach of the doctors at the grass-root level. We apprehend that would happen. Normally, girls will not go to the clinic and show themselves off that they have become pregnant illegally and so they want to terminate the pregnancy. They feel shy of it. They seek the help of the people who are not legally qualified for this purpose. Therefore, this shyness in the society, this exclusion from the society should be recognised by the Government. Doctors who are well-qualified at the grass-root level, who are practising in the rural areas should be allowed to do the termination of pregnancy. In day-to-day life, many ladies are becoming pregnant due to various reasons. They are going for scanning. Nowadays, doctors are not telling the actual defect in the initial stage even if scanning is done. The law says that there should be an upper limit of only five months, that is, 20 weeks of the baby. After 20 weeks, if there is any deficiency in the child, any mental retardation in the child, if it is recognised, then the pregnancy cannot be terminated. Therefore, the upper limit should be eliminated. The society may have some reservations. But we have to make a provision where there should not be any illegal trading by this method. Many of the nursing homes want to take advantage of this stringent law.

Now, the punishment has also been increased from two years to seven years. Normally, the traders who indulge in this kind of activity will treat this as one of the ways of making money from ordinary poor people. Therefore, we should be considerate towards the illiterate people and also towards the people who need some guidance.

I would like to make another suggestion here. The 'owner of the place' is defined in the explanation given in the Bill.

A house owner may give his building on rent for a nursing home, but he may not be aware as to what is happening inside the building. It may be a recognised nursing home but an unregistered medical officer may be doing the operation there. In that case, the house owner will also be included as a co-accused and he will face the situation of undergoing seven years imprisonment. This point should be considered again.

Then, another explanation is given in the Bill where it is mentioned that there is no need for a person doing the surgery to have training in gynaecology and obstetrics. This type of exemption will also allow some people to enter into illegal trade.

Finally, I would like to appreciate the Government's intention in bringing forward this Bill, but at the same time, they should help the ordinary people, especially the middle class people, who cannot afford to spend the money to go to good and recognised hospitals or get help from district headquarter hospitals which are devoid of all the facilities, where one has to search for the doctors. When you say that there should be three doctors at the time of the operation and the Chief doctor should also be present, this is not practical in day-to-day life. Therefore, ordinary people should be in a position to go in for termination of unwanted child which is already defined in a proper way under Clause 3 (2) (b) of the Bill.

SHRI HANNAN MOLLAH (ULUBERIA): Mr. Deputy-Speaker, Sir, I thank the Minister for bringing this Bill. It is very much necessary and this Bill has been introduced in this House after considering the opinion given by the National Commission for Women.

I agree with the point made by Shri Sudarsana Nachiappan regarding mentally retarded people, because their case is totally different. I feel that it would create a problem to that section of the people. So, I would request the Minister to consider this point and if he cannot amend it here, he can even clarify it in the rules so that in the name of mental retardation, this section of the people are not affected because there is a large section of women in our country who are mentally retarded. This should be taken care of by properly clarifying it in the rules.

Sir, our society is a feudal society and illiteracy is a dominant feature especially in our rural life. In this situation, normally women are always discriminated. Here, in this case also, they are forced to go in for termination of pregnancy by the male members in their family. I would like to draw the attention of this august House that pre-natal test is very popular in our country, especially in North India. In Haryana, if it is found in the pre-natal test that the child in the womb is a girl, then they kill the child. The woman may not agree for that, but due to the feudal nature of the society, they are forced to kill the child in the womb. So, this should also be taken care of.

The desire of women should also be taken care of. Because of social pressure and family pressure, they are forced to go for termination of pregnancy. That is one area of concern.

There is also another matter of concern which I saw in the newspapers. Because of that, in Haryana, the population of women has reduced tremendously. Take the case of women in Haryana in the age group of one to 10 years. For every 1,000 boys, there are 642 girls. About 400 girls are less in that age group. It is creating a big problem. Even social problems have been created. The Government should take care of this aspect. Women should be protected from their family pressure and it should be seen whether they are also involved in actually killing the children during pregnancy. This is a very serious social problem which should be taken care of. With these words, I thank you and support the Bill.

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : उपाध्यक्ष महोदय, जो मैडिकल टर्मिनेशन ऑफ प्रैगनैन्सी अमेन्डमेंट बिल, 2002 माननीय मंत्री जी ने प्रस्तुत किया है, इसमें इन्होंने राष्ट्रीय महिला आयोग के सुझाव पर गठित समिति द्वारा जो अनुशंसाएं की गईं, उसका कार्यान्वयन करने का इसमें निश्चय किया है। मुझे आश्चर्य है कि इस कानून के द्वारा पहले ही गर्भपात को कानूनी दर्जा दे दिया गया था। लेकिन सरकार का एक कानून है जिसका नाम है प्रिवेन्शन ऑफ प्री नेटल डायग्नोस्टिक टैस्ट ऐक्ट 1996। प्रैगनैन्सी स्टेज में देखा जाता है कि हर राज्य में अल्ट्रासाउंड से टेस्ट करके जहां लड़की है तो गर्भपात करा दिया जाता है। एक तरफ गर्भपात को कानूनी दर्जा है और दूसरी तरफ यह कानून प्री नेटल डायग्नोस्टिक टैस्ट ऐक्ट 1996 है जबकि सुप्रीम कोर्ट ने बार-बार हिदायत दी, सरकार को फटकार लगाई। देश भर में इस पर हो-हल्ला हुआ है और जितने सूझ-बूझ वाले लोग हैं वे कह रहे हैं - भ्रूण हत्या पर नया बिल जल्दी ही, भ्रूण परीक्षा का प्रचार करने वाले क्लिनिकों पर कड़ी कार्रवाई का निर्देश, लिंग परीक्षण वह गर्भपात संबंधी विज्ञापनों पर पाबंदी का आदेश, कन्या भ्रूण हत्या के दोगी को दो से सात साल तक कैद होगी, भ्रूण परीक्षण में लिफ्ट डाक्टरों पर छापे की योजना, हरियाणा में बालिका भ्रूण हत्या रोकने के लिए कारगर उपाय नहीं है।

इन सभी बातों को देखने से साफ नहीं हो रहा है कि एक तरफ चिकित्सकीय समापन का कानून पास कर रहे हैं और विधेयक लाए हैं और दूसरी तरफ सुप्रीम कोर्ट और देश के जितने समझ-बूझ वाले लोग हैं, वे हाय-तौबा मचा रहे हैं कि भ्रूण हत्या रोकनी जाए। एक तरफ गर्भपात ठीक से हो, मैडिकल ढंग से हो, गलत आदमी उसको नहीं कराए जिससे बीमारियां हो जाती हैं, इन बातों में कैसा कंट्रैडिक्शन है? एक तरफ गर्भपात कानूनी और दूसरी तरफ भ्रूण हत्या पर रोकने के लिए सरकार का कानून, दोनों के संदर्भ में सरकार क्या सोचती है। देश भर में जनगणना के आधार पर भी देखा गया है कि लड़कियों की संख्या परसेंटेज में घट रही है और अपने समाज में पहले से ही बीमारी है कि लड़की होने से खराब मानते हैं और महिलाओं का बचपन से अंत तक शोण होता है। अल्ट्रासाउंड से टेस्ट पर रोक की बात हो गई, यह कानून बन गया। फिर भ्रूण हत्या पर रोक है, भ्रूण हत्या हत्या के बराबर है, यह भी कानून है और फिर कह रहे हैं कि ठीक से गर्भपात हो और गलत ही आदमी कहीं गर्भपात न करा दे वह कानून लाए हैं। इन दोनों कानूनों को पढ़ने या समझने या विचार करने से हमें आपस में बड़ा विरोधाभास लगता है। इसलिए मंत्री जी साफ करें कि क्या गर्भपात भ्रूण हत्या नहीं है? **â€œ**(व्यवधान)

MR. DEPUTY-SPEAKER: Shri Rudy, the Minister concerned will reply.

â€¦ (व्यवधान)

डॉ. रघुवंश प्रसाद सिंह : अब उनको यह विभाग ही नहीं दिया। शायद उनको मौका ही नहीं मिलता जवाब देने का, लेकिन इस विभाग के कैबिनेट मिनिस्टर फिल्म वाले हैं इसलिए इनको जवाब देने का मौका मिला है।

रूडी जी को चूंकि कोई जवाब देने का मौका नहीं मिलता है। इसलिए वे यहां बैठकर लुत्फ उठाते हैं।

छोटे मंत्री जी ठीक जवाब देते हैं। शत्रुघ्न सिन्हा जी तो डायलॉग मारने में ही लगे रहते हैं।

उपाध्यक्ष महोदय : साढ़े तीन बजे तक हमें यह समाप्त करना है। कृपया जल्दी खत्म कीजिए।

डॉ. रघुवंश प्रसाद सिंह : उपाध्यक्ष महोदय, हमारा यही सवाल है कि जो कन्फ्यूजन इन्होंने क्रिएट कर दिया है, उसे ये कैसे दूर करेंगे ? माननीय मंत्री जी, माननीय सुप्रीम कोर्ट बार-बार हिदायत दे रही है कि अल्ट्रासाउंड पर रोक लगाई जाए, भ्रूण हत्या पर रोक लगाई जाए और आप बिल ला रहे हैं कि गर्भपात सुरक्षित ढंग से हो और इसकी अनुमति दी जाए। महोदय, गर्भपात और भ्रूण हत्या, इन दोनों में क्या फर्क है ? आप कहते हैं कि गर्भपात चिकित्सकीय आधार पर, विशेषज्ञ करेगा, ठीक जगह पर करेगा और स्वास्थ्यकर स्थितियों में होगा। दूसरी तरफ भ्रूण हत्या पर आज रोक लगा रहे हैं। इस प्रकार से ये दोनों कानून एक दूसरे के बहुत विरोधी हैं। इन दोनों के संबंध में माननीय मंत्री जी स्पष्ट करें। हम लोगों को इसमें बड़ा कन्फ्यूजन हो रहा है। इनके बारे में देश भर में तमाम प्रकार के समाचार छप रहे हैं, राज्य भर में ऐसा हो रहा है, अल्ट्रासाउंड जांच और विज्ञापन आदि पर सुप्रीम कोर्ट ने बड़ा कड़ा रुख अख्तियार किया है। अब ये दोनों कानून एक-दूसरे के विरोधाभासी हैं जिन्हें मंत्री जी लाए हैं। इस बारे में मंत्री जी सफाई दें। तभी हम इसको पास करेंगे, नहीं तो हम इस पर झंझट खड़ा करेंगे।

DR. V. SAROJA (RASIPURAM): Hon. Deputy-Speaker Sir, thank you very much for giving me this opportunity. The Medical Termination of Pregnancy Act is aimed at eliminating abortion by untrained person and in unhygienic conditions and thereby reducing maternal morbidity and mortality in the country.

The Bill says that in 1997, an expert group was constituted. I would like to know from the hon. Minister whether this Committee has been set up in all the districts in all the States. If it has not been constituted so far, will the Government bring an Ordinance so that a law is made and it can be implemented in every part of our country? In those States and districts, where the committees have been constituted, how many cases are brought to book and what action has been taken so far?

Sir, under the leadership of Puratchithalaivi, Dr. Jayalalitha, Tamil Nadu recently constituted a Medical Grievances Cell along with Indian Medical Association, Tamil Nadu Branch, to address the medical negligence and also to render justice to the patients as well as to the doctors. Will the Government of India come forward to constitute such Grievance Cells in all the States so that every case of negligence is medically audited and the culprit is booked under the law?

The then former Prime Minister, Shri Rajiv Gandhi had promised on the floor of the House that the medical profession would be deleted from the Consumer Protection Act. I am a doctor by profession and I say that the culprit should be brought to book. But at the same time, the doctors should also be given justice. Will the hon. Minister take a note of it?

Sir, if only 100 per cent anti-natal registration is done throughout the country, by this one single system, you will be able to identify the high risk pregnancy. Thereby the aim of maternal morbidity and mortality can be identified and referred to the concerned medical centre for prompt care and at proper time. Thereby you will not only reduce the maternal morbidity and mortality but also infant morbidity and mortality.

Sir, the hon. Minister, in the previous Bill, has stated that there are more than one lakh sub-centres. If more than one lakh sub-centres are going to deliver the quality of service, then why is there so much of infant morbidity and mortality and maternal morbidity and mortality?

Sir, will the Government of India take up the responsibility of providing a health nurse for every 5,000 people? If one hundred per cent anti-natal registration is done within a period of six months' time, then this one single Act will be able to bring down the morbidity and mortality and also improve the quality of the service, especially female-related

problems.

Sir, in this case, it is said that the punishment will be extended up to seven years. Even if a registered medical doctor is found to be guilty because of his medical negligence, his registration should be cancelled. Only then we will be able to improve the quality of service.

Last but not least, what is the definition of 'clinic' where the abortion takes place? It can be done within four walls. There is no definition at all. There is no definition of 'obstetric room'. The labour room with moveable space and trained para-medical staff is not there.

Recently, in the State of Tamil Nadu, when a case of medical negligence was reported, the doctors and paramedical staff, including the fourth class employees who were posted in that ward during the duty time, were immediately booked and action was taken against them. Will the Government initiate such a stringent action against the medical and paramedical people so that quality service will be rendered?

THE MINISTER OF STATE IN THE MINISTRY OF HEALTH AND FAMILY WELFARE (SHRI A. RAJA): Sir, I would like to express again my thanks to all the Members who have spoken on this important subject. By summarising the views expressed by the hon. Members, I can, by way of reply, make a few observations.

So far as the hon. Member, Shri Natchiappan is concerned, he said about mentally ill person and mentally retarded person. The letter and spirit of the law is to bring the changes. In the erstwhile Act, it was stated 'Lunatic'. Since the word, 'Lunatic' itself is changed as 'mentally ill person', a consequential change has been made here. The purpose of the Act is, whether lunatic or mentally ill person, the consent of the guardian must be obtained before the abortion, that is, medical termination of pregnancy. That is important. There is no question of mentally ill person or mentally retarded person.

A confusion arose between the Pre-Natal Diagnostic Act and MTP Act. This Act deals with elimination of illegal abortions by untrained persons and in unhygienic condition to reduce maternal mortality. This is the purpose of this Act. But the purpose of PNDT Act is to prevent the usage of the techniques available to pre-determine the sex of foetus. This is for the safe delivery, which can cause maternal mortality for mother. But the Pre-Natal Diagnostic Act is to monitor the sex ratio which can prevent the female foeticide.

As far as the concern expressed by Dr. V. Saroja is concerned, she wants to ensure the institutional deliveries. By crude delivery, they cannot reduce IMR and MMR. All the State Governments have been provided with funds and they have been advised to take only institutional deliveries. Otherwise, mothers and others should be brought into hospital and delivery should be done. Such a care has already been taken in the National Health Policy, 2002.

Now, I request the hon. Members to pass this legislation unanimously.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill to amend the Medical Termination of Pregnancy Act, 1971, as passed by Rajya Sabha, be taken into consideration. "

The motion was adopted.

MR. DEPUTY-SPEAKER: Now, the House will take up clause-by-clause consideration of the Bill.

The question is:

"That clauses 2 to 5 stand part of the Bill."

The motion was adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

SHRI A. RAJA: *I beg to move:*

"That the Bill be passed. "

MR. DEPUTY-SPEAKER: *The question is:*

"That the Bill be passed. "

The motion was adopted.
