

# THE MTP AMENDMENT BILL, 2014



ASIAN CENTRE FOR HUMAN RIGHTS



THE MTP AMENDMENT BILL, 2014:  
INDIA'S BETI MAR DO CAMPAIGN



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## **The MTP Amendment Bill, 2014: India's Beti Mar Do campaign**

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# I. EXECUTIVE SUMMARY

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In its pursuit of introducing India's civilisational values in the field of medicine, the National Democratic Alliance (NDA) led Government of India has proposed further amendments to the Medical Termination of Pregnancy Act of 1971 in October 2014 to allow AYUSH practitioners (excluding Yoga and Naturopathy), homeopaths, nurses and auxiliary nurse midwife (ANM) to conduct abortions<sup>1</sup> and also increase the gestation period for abortion from current 20 weeks to 24 weeks.<sup>2</sup>

This effectively means the Government of India launching *Beti Mar Do* (kill daughters) Campaign.

## i. Increasing more risks to life during pregnancy

As many as 50,000 pregnant women die every year in India constituting 17% of the total maternal deaths in the world. India's MMR or maternal mortality ratio (number of maternal deaths per 1,00,000 live child births) was 178 in 2010-12 which is worse than poorer countries such as Myanmar and Nepal, and the same as Laos and Papua New Guinea.<sup>3</sup>

There is no data available on the numbers of unsafe abortions.<sup>4</sup> On 1 August 2014, then Union Minister of Health and Family Welfare, Dr Harsh Vardhan stated before the Lok Sabha that "*Data on the number of illegal, unsafe abortions has not been captured by any National Level Survey*".<sup>5</sup> Earlier, the Government stated that about 8% of the maternal deaths in India are due to unsafe abortions.<sup>6</sup> The Indian Council of Medical Research (ICMR) on the other hand stated that unsafe abortions account for 15-20 per cent of maternal mortality in India.<sup>7</sup>

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1. Section 2, clause (d) of the Medical Termination of Pregnancy (Amendment) Bill, 2014
  2. Answer of the Union Minister of Health and Family Welfare, Shri Jagat Prakash Nadda to Unstarred Question No. 1074, answered on 2 December 2014 in the Rajya Sabha
  3. The Millennium Development Goals Report 2014, United Nations, available at <http://www.un.org/millenniumgoals/2014%20MDG%20report/MDG%202014%20English%20web.pdf>
  4. Statement of then Union Minister of Health and Family Welfare Mr Ghulam Nabi Azad in response to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013
  5. Statement of then Union Minister of Health and Family Welfare, Dr Harsh Vardhan in response to Unstarred Question No.3349 in the Lok Sabha on 01.08.2014
  6. Statement of then Union Minister of Health and Family Welfare Mr Ghulam Nabi Azad to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013. Also see, Annual Report 2013-14 of the Ministry of Health and Family Welfare, Page 54, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)
  7. <http://icmr.nic.in/annual/nirrh/L%20Chapter%206%20109%20-%20114.pdf>
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NGOs working on increasing access to safe abortion services estimated that one woman dies of abortion-related causes every two hours in India.<sup>8</sup> The Ministry of Health and Family Welfare unambiguously acknowledged that *“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.”*<sup>9</sup>

The critical question is whether AYUSH, homeopaths, nurses and ANM can be allowed to conduct abortions. The Medical Termination of Pregnancy (MTP) Act makes opinion of two registered medical practitioners mandatory to record 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”*.<sup>10</sup> Can the AYUSH, homeopaths, nurses and ANM provide such opinion?

The Indian Medical Association (IMA) and the Federation of Obstetric and Gynaecological Societies of India (FOGSI) stated that only registered medical practitioners who are all trained qualified MBBS doctors as defined in the current MTP Act, 1971<sup>11</sup> can perform the abortions and AYUSH doctors, homeopaths, nurses and ANMs are not equipped and/or trained to handle emergency situations.<sup>12</sup> In a country where blinding of people for simple cataract surgeries such as in Indore, Madhya Pradesh<sup>13</sup> or death of women in tubectomy operations in Chhattisgarh<sup>14</sup> by registered medical practitioners are regular, extending to the AYUSH and others in abortion services is nothing

8. 'Unsafe abortions killing a woman every two hours', *The Hindu*, May 6, 2013, available at <http://www.thehindu.com/news/national/unsafe-abortion-killing-a-woman-every-two-hours/article4686897.ece>

9. <http://164.100.47.132/LssNew/psearch/Result13.aspx?dbsl=4858>

10. Childbirth Kills 50,000 Indian Women Every Year, *The Quint*, 26 September 2015 available at <http://www.thequint.com/health-fitness/2015/09/25/botched-abortion-kills-50000-indian-women-every-year>

11. Statement of Union Minister of Health and Family Welfare Shri Jagat Prakash Nadda in response to Unstarred Question No. 908 in the Rajya Sabha on 5 May 2015

12. City body of doctors opposes amending MTP Act, writes to health ministry, *Indian Express*, 12 November 2014, <http://indianexpress.com/article/cities/ludhiana/city-body-of-doctors-opposes-amending-mtp-act-writes-to-health-ministry/>

13. While 42 patients lost their eye sight following botched cataract surgeries in a health camp at Barwani, the Indore district in November 2015 please see <http://www.freepressjournal.in/govt-turns-a-nelsons-eye-to-eye-check-up-woes/>

14. Chhattisgarh sterilisation tragedy: Despite deaths, 26 more tubectomies were done in one hour in another camp - See more at: <http://indianexpress.com/article/india/india-others/even-after-deaths-26-more-tubectomies-were-done-in-one-hour-at-another-camp/#sthash.qYFjCbCt.dpuf>

but legalising risking of lives during abortion. After all, the MTP Act comes to play only in cases of medical complications which actually require specialised doctors. If that is the case, how could AYUSH doctors, homeopaths, nurses and ANMs be allowed to conduct abortion requiring opinion of two doctors under the MTP Act.

## ii. Impetus to female foeticide

The proposed MTP Bill provides impetus to female foeticide.

India has the highest female foeticide incidents in the world which stands exposed from declining number of female child population in the age group of 0-6 years from 78.83 million in 2001 to 75.84 million in 2011. During 1991-2011, the child sex ratio (0-6 years) declined from 945 to 914.<sup>15</sup> The links between termination of pregnancy and declining female child population cannot be missed despite the enactment of the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act of 1994. The Ministry of Health and Family Welfare in its 2013-2014 Annual Report stated “*Sex determination techniques have been in use in India since 1975 primarily for the determination of genetic abnormalities. However, these techniques were widely misused to determine the sex of the foetus and subsequent elimination if the foetus was found to be female.*”<sup>16</sup> In Delhi itself “as many as 89 hospitals and nursing homes reported child sex ratio at birth of 800 girls for every 1,000 boys raising suspicions about possible sex selective abortions. The sex ratio in one hospital was less than 300, in two hospitals it was between 300 and 400, seven hospitals had sex ratio between 400 and 500, 13 hospitals recorded between 500 and 600, 27 hospitals had between 600 and 700 and 39 hospitals had between 700 and 800”.<sup>17</sup>

There is no doubt that implementation of the Medical Termination of Pregnancy (MTP) Act remains wanting. As of 27 August 2010, only two doctors were convicted under the MTP Act in Haryana which is infamous for female foeticide/infanticide.<sup>18</sup> This is not surprising considering that on 1 August

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15. India loses 3 million girls in infanticide, The Hindu, 9 October 2012, <http://www.thehindu.com/news/national/india-loses-3-million-girls-in-infanticide/article3981575.ece>

16. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 27, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

17. 89 hospitals in Delhi get notices over poor sex ratio, The Hindustan Times, 16 October 2015 available at <http://www.hindustantimes.com/delhi/89-hospitals-in-delhi-get-notices-over-poor-sex-ratio/story-VO78NjHzqcRiaNXiGc5DyN.html>

18. 23 doctors convicted under PNDT Act in Haryana, Daily Bhaskar, 27 August 2010, <http://daily.bhaskar.com/>

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2014, then Union Minister of Health and Family Welfare, Dr Harsh Vardhan stated before the Lok Sabha that information on the number of doctors/clinics found involved in illegal abortions “is not available with the Ministry of Health and Family Welfare.”<sup>19</sup>

Under such circumstances the proposed amendments to the MTP Act is nothing but a “*Beti Mar Do*”, kill the daughter, campaign in contrast to Prime Minister Narendra Modi’s “*Beti Bachao, Beti Padhao*” campaign launched from Panipat, Haryana on 23 January 2015.<sup>20</sup>

The MTP Amendment Bill, 2014 must be considered from serious underreporting under the Act. It is assumed that States with more population will report more such cases. For example, Assam with a total population of 31,205,576 as per 2011 census reported a total of 3,53,309 cases of termination of pregnancies under the MTP Act during 2008-2009 to 2012-13. Whereas Uttar Pradesh with a population of 199,812,341 as per 2011 census reported a total of 3,60,555 cases during the same period. In other words, Uttar Pradesh despite having 159 million population more than Assam reported only 7,246 cases more than Assam. On the other hand, Maharashtra having a population of 112,374,333 as per 2011 census i.e. less than Uttar Pradesh reported 5,44,671 cases of termination of pregnancies under the MTP Act during the said period.<sup>21</sup> Some other major States with population more than Assam as per 2011 census reported less cases than Assam. These States include Andhra Pradesh (32,842 cases) with over 84 million population; Bihar (67,895 cases) with population of over 100 million; Gujarat (1,04,901 cases) with population of over 60 million; Karnataka (1,30,410 cases) with population of over 61 million; Madhya Pradesh (1,32,118 cases) with population of over 72 million; Odisha (103,146 cases) with population of over 41 million; Rajasthan (158,470 cases) with population of over 68 million; Tamil Nadu (299,083 cases) with population of over 72 million; and West Bengal (269,091 cases) with population of over 91 million.<sup>22</sup>

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news/23-doctors-convicted-under-pndt-act-in-haryana-1301801.html

19. Statement of then Union Minister of Health and Family Welfare, Dr Harsh Vardhan in response to Unstarred Question No.3349 in the Lok Sabha on 01.08.2014

20. <http://timesofindia.indiatimes.com/india/PM-Modi-launches-Beti-Bachao-Beti-Padhao-campaign-says-female-foeticide-is-a-sign-of-mental-illness/articleshow/45985741.cms>

21. The population figures are taken from 2011 Population Census, Govt. of India <http://censusindia.gov.in/>

22. The population figures are taken from 2011 Population Census, Govt. of India <http://censusindia.gov.in/>

The proposed amendments in the MTP Act needs to be withdrawn and the existing MTP Act ought to be implemented with the requirement to submit details of abortion done under the MTP Act to be provided to the Government of India and the State Governments to prevent its misuse.

## 2. BACKGROUND

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According to a study “*Children in India 2012 - A Statistical Appraisal*” conducted by the Central Statistics Office under the Ministry of Statistics and Programme Implementation, Government of India, nearly three million girls, one million more than boys, are “missing” in 2011 compared to 2001. According to the report, female child population in the age group of 0-6 years was 78.83 million in 2001 which declined to 75.84 million in 2011. During the period 1991-2011, the child sex ratio (0-6 years) declined from 945 to 914, whereas the overall sex ratio showed an improvement from 927 to 940.<sup>23</sup>

In his radio programme “Mann Ki Baat”, Prime Minister Narendra Modi on 28 June 2015 expressed deep concern over the declining sex ratio in 100 districts of India and emphasised on campaign to save the girl child.<sup>24</sup> In India, declining of child sex ratio is directly linked with sex selective abortions. The Ministry of Health and Family Welfare acknowledges that “actually illegal abortions still outnumber legal abortions by a large margin” and “10-15 thousand women die every year due to complications resulting from unsafe abortions conducted at unapproved places by untrained providers”.<sup>25</sup> Yet the Ministry has proposed further amendment to the Medical Termination of Pregnancy Act of 1971 (amended in 2002). According to the draft Medical Termination of Pregnancy (Amendment) Bill of 2014 which was made public on 29<sup>th</sup> October 2014 by the Ministry of Health and Family Welfare,<sup>26</sup> AYUSH practitioners (excluding Yoga and Naturopathy), homeopaths, nurses and auxiliary nurse midwife (ANM) will be allowed to conduct abortions.<sup>27</sup> Further, the gestation period will be increased from current 20 weeks to 24 weeks.<sup>28</sup> This will only lead to increased illegal and unsafe abortions by untrained doctors and in unapproved

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23. India loses 3 million girls in infanticide, *The Hindu*, 9 October 2012, <http://www.thehindu.com/news/national/india-loses-3-million-girls-in-infanticide/article3981575.ece>

24. Mann Ki Baat: PM Modi concerned over declining sex ratio, *The Times of India*, 29 June 2015, available at <http://timesofindia.indiatimes.com/india/Mann-Ki-Baat-PM-Modi-concerned-over-declining-sex-ratio/articleshow/47850912.cms>

25. <http://164.100.47.132/LssNew/psearch/Result13.aspx?dbsl=4858>

26. Notification No. 12015/49/2008-MCH issued by the Ministry of Health & Family Welfare, Government of India dated 29<sup>th</sup> October 2014

27. Section 2, clause (d) of the Medical Termination of Pregnancy (Amendment) Bill, 2014

28. Answer of the Union Minister of Health and Family Welfare, Shri Jagat Prakash Nadda to Unstarred Question No. 1074, answered on 2 December 2014 in the Rajya Sabha

places, thereby leading to increase in sex selective abortions apart from risks to the lives of pregnant women.

Following widespread objections against inclusion of non-MBBS doctors, namely Ayush doctors, homoeopaths and nurses to conduct MTP, in particular from the Indian Medical Association (IMA) and the Federation of Obstetric and Gynaecological Societies of India (FOGSI),<sup>29</sup> the Government of India has not yet presented the Medical Termination of Pregnancy (MTP) Amendment Bill in the Parliament.<sup>30</sup>

The Medical Termination of Pregnancy Act of 1971, which came into force from 1 April 1972, legalised abortion in India. The MTP Act was revised in 1975.<sup>31</sup> Prior to enactment of the legislation, the Indian Penal Code (Act No. 45 of 1860) permitted abortion only in good faith for the purpose of saving the life of the pregnant woman. Section 312 of the Indian Penal Code provided that any person performing an illegal abortion shall be liable for imprisonment for three years and/or payment of a fine, if the woman was “quick with child”, the punishment was imprisonment for up to seven years and payment of a fine. The same penalty applied to a woman who induced her own miscarriage.<sup>32</sup>

The MTP Act of 1971 (amended in 2002) allows abortion up to 20 weeks of pregnancy in cases where “*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, “*there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped*”<sup>33</sup>. When the pregnancy is caused by rape or as a result of failure of family planning device or method used by any of the married couples, pregnancy can be terminated.<sup>34</sup> Abortion is allowed only when it is conducted by registered medical practitioners at a hospital established or maintained by the Government or a facility certified by the

29. Answer of Union Minister of Health and Family Welfare, Shri Jagat Prakash Nadda, Unstarred Question No. 908 answered on 5 May 2015 in the Rajya Sabha

30. Proposed law set to allow abortion up to 24 weeks, *The Times of India*, 29 June 2015, available at <http://timesofindia.indiatimes.com/india/Proposed-law-set-to-allow-abortion-up-to-24-weeks/articleshow/47857851.cms>

31. Ministry of Health and Family Welfare, “Family Welfare Statistics in India 2011”, Page xviii , <http://mohfw.nic.in/WriteReadData/1892s/3503492088FW%20Statistics%202011%20Revised%2031%2010%2011.pdf>

32. <http://www.un.org/esa/population/publications/abortion/doc/india.doc>

33. Section 3, sub section (2) of the Medical Termination of Pregnancy Act of 1971

34. Section 3, sub section (2) of the Medical Termination of Pregnancy Act of 1971

Government or a District Level Committee constituted by the Government<sup>35</sup>. However, in special circumstances, pregnancy can be terminated any time (i.e. beyond 20 weeks' gestation) and without approval of a second doctor when "the termination of such pregnancy is immediately necessary to save the life of the pregnant woman."<sup>36</sup> In this case, the registered medical practitioner need not have the requisite experience or training in gynecology and obstetrics as required under Section 2 (d) to perform the abortion.<sup>37</sup> Specific punishments were prescribed for any illegal abortion under the MTP (Amendment) Act of 2002, which shall not be less than 2 years rigorous imprisonment but which may extend to 7 years under the IPC.<sup>38</sup>

The MTP Act is considered to be a liberal legislation which provide safe abortion facilities for medically and psychologically complicated cases. But forty three years after medical termination of pregnancy was legalized in the country, access to safe abortion still remains a distant dream for many. Over the years the number of government-approved MTP clinics increased from 3,294 in 1980-81 to more than 12,510 in 2007-08. Accordingly, the number of abortions performed in these government-approved MTP clinics increased from 3,88,405 during 1980-81 to 6,36,010 during 2012-2013.<sup>39</sup> However, a large number of unsafe abortions still take place outside the government approved centres.<sup>40</sup> While the government of India does not have any official data on illegal abortions, the Ministry of Health and Family Welfare has unambiguously acknowledged that "*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.*"<sup>41</sup> Further on 6 August 2013, then Union Minister of Health and Family Welfare Mr Ghulam Nabi Azad told the Rajya Sabha that a total of 11.06 lakh abortions were recorded in the year 2008-09 in India.<sup>42</sup> But unofficial estimates made by independent research

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35. Section 4 of the Medical Termination of Pregnancy Amendment Act of 2002

36. Section 5, sub section (1) of the Medical Termination of Pregnancy Act of 1971

37. See Explanation 2 under Section 5 of the Medical Termination of Pregnancy Amendment Act of 2002

38. Section 5, sub-sections (2)-(4) of the MTP Amendment Act of 2002

39. Ministry of Health and Family Welfare, Government of India's "Health and Family Welfare Statistics in India 2013", Pp 208-209, <https://nrhm-mis.nic.in/PubFWStatistics%202013/Complete%20Book.pdf>

40. Ministry of Health and Family Welfare, Annual Report 2004, Page 158, <http://mohfw.nic.in/WriteReadData/l892s/FAMILYWELFARE-38385935.pdf>

41. <http://164.100.47.132/LssNew/psearch/Result13.aspx?dbsl=4858>

42. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad to Unstarred Question No. 257, in the Rajya Sabha on 6 August 2013,

study of 2004 “Abortion Assessment Project - India (AAPI)” coordinated by CEHAT, Mumbai and Healthwatch, Delhi estimated a staggering 6.4 million (64 lakhs) abortions taking place annually in India. Of these, 1.6 million (16 lakhs) abortions i.e. 25% were performed by informal (traditional and/or medically non-qualified) abortion service providers.<sup>43</sup>

According to the Annual Report 2013-14 of the Ministry of Health and Family Welfare, “still an estimated 47,000 mothers continue to die every year due to causes related to pregnancy, childbirth and the post-partum period”.<sup>44</sup> According to the official data, 8% of the maternal deaths in India are due to unsafe abortions.<sup>45</sup> However, according to the Indian Council of Medical Research (ICMR), unsafe abortions account for 15-20 per cent of maternal mortality in India.<sup>46</sup> Ipas, an international NGO working on increasing access to safe abortion services, estimated that one woman dies of abortion-related causes every two hours in India.<sup>47</sup>

It is a well known fact that abortions have been directly responsible for fall in the Child Sex Ratio due to selective abortions to eliminate the female foetuses. According to the Annual Report 2013-14 of the Ministry of Health and Family Welfare, “*The Child Sex Ratio (CSR) for the age group of 0-6 years as per the 2011 census (provisional) has dipped further to 919 girls as against 927 per thousand boys recorded in 2001 Census. This negative trend reaffirms the fact that the girl child is more at risk than ever before. Except for the States/ UTs viz. Puducherry (967), Tamil Nadu (943), Karnataka (948), Delhi (871), Goa (942), Kerala (964), Mizoram (970), Gujarat (890), Arunachal Pradesh (972), Andaman & Nicobar Islands (968), Himachal Pradesh (909), Haryana (834), Chandigarh (880) and Punjab (846), the CSR has shown a declining trend in 18 States and 3 UTs. The steepest fall of 79 points is in J&K and the largest increase of 48 points is in Punjab.*”<sup>48</sup> Half of the districts in the country showed decline in the CSR greater than the national

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43. See <http://www.cehat.org/go/uploads/AapIndia/summary.pdf>

44. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 51, available at [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

45. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013. Also see, Annual Report 2013-14 of the Ministry of Health and Family Welfare, Page 54, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

46. <http://icmr.nic.in/annual/nirrh/L%20Chapter%206%20109%20-%20114.pdf>

47. ‘Unsafe abortions killing a woman every two hours’, *The Hindu*, May 6, 2013, available at <http://www.thehindu.com/news/national/unsafe-abortion-killing-a-woman-every-two-hours/article4686897.ece>

48. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 27, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

average. The number of districts with Child Sex Ratio of 950 and above has been reduced from 259 to 182.<sup>49</sup>

According to the Ministry of Health and Family Welfare, “Some of the reasons commonly put forward to explain the consistently low levels of sex ratio are son preference, neglect of the girl child resulting in higher mortality at younger age, **female infanticide, female foeticide, higher maternal mortality and male bias in enumeration of population. Easy availability of the sex determination tests and abortion services may also be proving to be catalyst in the process, which may be further stimulated by pre-conception sex selection facilities. Sex determination techniques have been in use in India since 1975 primarily for the determination of genetic abnormalities. However, these techniques were widely misused to determine the sex of the foetus and subsequent elimination if the foetus was found to be female.**”<sup>50</sup>

Several independent studies have shown that abortions have been linked to sex determination. A study, based on a national survey of 1.1 million Indian households and published in *Lancet* journal on 9 January 2006, claims that nearly 500,000 female babies are lost in India every year because of selective abortion. The study claimed that 10 million female births may have been aborted in India in the past 20 years. The study discovered that the “girl deficit” was more common among educated families, especially in homes where the first-born was a girl.<sup>51</sup> Though the official data is very conservative, in the last decade from 2004 to 2013, a total of 1,263 cases of foeticide were recorded in India by the NCRB. These included 221 cases of foeticide in 2013<sup>52</sup>, 210 cases in 2012,<sup>53</sup> 132 cases in 2011,<sup>54</sup> 111 cases in 2010,<sup>55</sup> 123 cases in 2009,<sup>56</sup> 73 cases in 2008,<sup>57</sup> 96 cases in 2007,<sup>58</sup> 125 cases in 2006,<sup>59</sup> 86 cases in 2005,<sup>60</sup> and 86 cases in 2004.<sup>61</sup>

49. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 27, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

50. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 27, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

51. 10 million female births aborted in India: study, *The Hindu*, 10 January 2006, available at <http://www.thehindu.com/todays-paper/tp-international/10-million-female-births-aborted-in-india-study/article3237700.ece>

52. NCRB, “Crime In India 2013”, Chapter 6

53. NCRB, “Crime In India 2012”, Chapter 6

54. NCRB, “Crime In India 2011”, Chapter 6

55. NCRB, “Crime In India 2010”, Chapter 6

56. NCRB, “Crime In India 2009”, Chapter 6

57. NCRB, “Crime In India 2008”, Chapter 6

58. NCRB, “Crime In India 2007”, Chapter 6

59. NCRB, “Crime In India 2006”, Chapter 6

60. NCRB, “Crime In India 2005”, Chapter 6

61. NCRB, “Crime In India 2004”, Chapter 6

A study conducted by Indian Council of Medical Research (ICMR) suggests that MTP is being used as a family planning method. A total of 1851 women who had an induced abortion during the previous 3 years were interviewed in 13 states. The study found that main reason for seeking abortion was “don’t need any more children” (42%) and “don’t need any more daughters” (12.4%). Around 46% women accessed abortion services from private clinics as compared to government hospital (37%) and primary health centre/community health centre (PHC/CHC) (14.0%). The decision to terminate pregnancy and place of abortion was made by the husband in 42.8% and 52.5% cases respectively.<sup>62</sup>

In 2008, ActionAid and the International Development Research Centre (IDRC) conducted a study on female foeticide and female infanticide across urban and rural sites in five states in north and northwest India. Families in more than 6,000 households were interviewed in five districts namely, Kangra in Himachal Pradesh, Morena in Madhya Pradesh, Dhaulpur in Rajasthan, Rohtak in Haryana and Fatehgarh Sahib in Punjab. The survey has found that although prenatal sex detection and sex-selective abortion is illegal, the law is not being enforced. Doctors, nurses and other medical practitioners are routinely violating the ban, performing abortions of female foetuses and benefiting financially. Female foetus are detected and aborted on payment of as low as Rs 1200. The move towards smaller families, ideally comprised of two children, is exacerbating discrimination against daughters. While boy-only families are on the rise, just 3% of families in Morena and Dhaulpur, 6% in urban Kangra and 2% in Fatehgarh Sahib have daughter-only families. Data from Fatehgarh Sahib shows that families are increasingly stopping at one son. This has led to sex-selective abortion.<sup>63</sup>

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62. Indian Council of Medical Research, Annual Report 2003-2004, Page 79, available at <http://icmr.nic.in/annual/hqds2004/reproductive.pdf>

63. Action Aid, “Disappearing daughters”, 18 June 2008, [http://www.actionaid.org.uk/sites/default/files/doc\\_lib/disappearing\\_daughters\\_0608.pdf](http://www.actionaid.org.uk/sites/default/files/doc_lib/disappearing_daughters_0608.pdf)

### 3. THE MTP ACT AND ITS PROVISIONS

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The Parliament of India passed the Medical Termination of Pregnancy (MTP) Act in 1971 to regulate and ensure access to safe abortions. The MTP Act lays down when and where a pregnancy cannot be terminated and who can terminate it. The law allows abortion only when “*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, “*there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped*”<sup>64</sup>. When the pregnancy is caused by rape or as a result of failure of family planning device or method used by any of the married couples, pregnancy can be terminated.<sup>65</sup> Abortion is allowed only when it is conducted by registered medical practitioners at a hospital established or maintained by the Government or a facility certified by the Government or a District Level Committee constituted by the Government<sup>66</sup>.

Under the above conditions, an unintended pregnancy may be terminated within the first 12 weeks of pregnancy on the opinion of one registered medical practitioner (RMP). But opinion of two RMPs is required for termination of pregnancy between 12 and 20 weeks.<sup>67</sup> Beyond 20 weeks gestation, abortion is illegal under the current law.

However, in special circumstances, pregnancy can be terminated any time (i.e. beyond 20 weeks’ gestation) and without approval of a second doctor when “the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”<sup>68</sup> In this case, the registered medical practitioner need not have the requisite experience or training in gynecology and obstetrics as required under Section 2 (d) to perform the abortion.<sup>69</sup>

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64. Section 3, sub section (2) of the Medical Termination of Pregnancy Act of 1971

65. Section 3, sub section (2) of the Medical Termination of Pregnancy Act of 1971

66. Section 4 of the Medical Termination of Pregnancy Amendment Act of 2002

67. Section 3, sub section (2) of the Medical Termination of Pregnancy Act of 1971

68. Section 5, sub section (1) of the Medical Termination of Pregnancy Act of 1971

69. See Explanation 2 under Section 5 of the Medical Termination of Pregnancy Amendment Act of 2002

The MTP Act allows abortion only by registered allopathic medical practitioners, whose name has been entered in a State Medical Register and who has the prescribed experience and training in gynecology and obstetrics.<sup>70</sup>

Whether to terminate a foetus or not is solely a decision to be taken by the pregnant woman. Section 3, sub-section (4) says that “no pregnancy shall be terminated except with the consent of the pregnant woman”, except in the case of minor or someone who is mentally unsound in whose case the written consent of her guardian must be taken.<sup>71</sup> The pregnant woman or the guardian of the minor girl/mentally ill woman has to give her or his, as the case may be, consent by signing “Form C”.<sup>72</sup>

The law does not permit abortion for the reason of sex selection. The MTP Act was amended in 2002 to delegate power to a Committee at the district level to facilitate recognition of more centres where MTPs can be undertaken; approval of sites that can perform MTPs can now be done at the district level, and to provide stricter penalties for MTPs done in un-approved site or by a person not permitted by the Act. The Amended Act came into force with effect from 18<sup>th</sup> June 2003.<sup>73</sup> The Amended Act now prescribes specific punishment which shall not be less than 2 years rigorous imprisonment but which may extend to 7 years under the IPC in the following cases (section 5 of the MTP Act) i. An MTP conducted by a person who is not a Registered Medical Practitioner as defined under the Act. ii. Any person who conducts an MTP at a place which is not approved iii. Owners (administrative heads) of places where MTP is conducted in case such a place is not approved to conduct MTPs.<sup>74</sup> All these are cognizable offences for which a police officer can arrest a doctor for violations without Warrant.

The law does not specify the punishment if pregnancy is terminated beyond 20 weeks’ gestation in violation of sub section (2) of Section 2 of the MTP Act, 1971.

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70. Section 2 (d) of the Medical Termination of Pregnancy Act of 1971

71. Section 3, sub section (4) of the Medical Termination of Pregnancy Act of 1971

72. Rule 8 of the Medical Termination of Pregnancy Rules, 2003

73. Gazette Notification F.No.M 12015/11/2003-MCH issued on 18<sup>th</sup> June 2003

74. Section 5, sub-sections (2)-(4) of the MTP Amendment Act of 2002

The MTP Act offers protection to registered medical practitioners who otherwise would be penalized under the Indian Penal Code (sections 315-316) for abortion.<sup>75</sup>

### **3.1 MTP Rules**

The Medical Termination of Pregnancy Rules, 2003 replaced the Medical Termination of Pregnancy Rules, 1975 which was necessitated due to the MTP Amendment Act of 2002. The MTP Rules 2003 lays down who can terminate the pregnancy, training requirements, approval process for place, etc. The aims of the MTP Rules are to enable proper implementation of the provisions of the Act, ensure that MTP services are provided by qualified persons in safe and hygienic settings and help to monitor quality of services.

#### **a. Experience and Training for doctors who can perform MTP**

As per Rule 4 of the MTP Rules 2003, the following experience and training are necessary for a registered medical practitioner to perform MTPs:

**For termination up to 12 weeks: The eligible doctor must have** assisted a Registered Medical Practitioner (RMP) in performing 25 cases of MTP of which at least 5 were performed independently in a hospital established or maintained or a training institute approved for this purpose by the Government. This training would enable such RMP to do only first trimester termination (upto 12 weeks of gestation).<sup>76</sup>

For termination up to 20 weeks: The following doctors are eligible:

- A practitioner registered in a State Medical Register immediately before commencement of the Act, experienced in practice of Obstetrics and Gynecology for a period not less than three years
- A practitioner who has completed six months house job in Obstetrics and Gynecology
- A practitioner who has at least one-year experience in practice of Obstetrics and Gynecology at a hospital which has all facilities
- A practitioner who holds a post-graduate degree or diploma in Obstetrics and Gynecology

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75. Section 3, sub section (1) of the Medical Termination of Pregnancy Act of 1971

76. Rule 4 (c) (i) of MTP Rules, 2003

## **b. Facilities - a place ought to have for getting government approval**

Under Rule 5 (1) of the MTP Rules 2003, no place shall be approved under clause (b) of Section 4 of the MTP Act, 1971 unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions and should have the following facilities.

For places up to 12 weeks (1st trimester)

- A Gynecology examination/ labor table
- Resuscitation and sterilization equipment
- Drugs & parental fluids
- Back up facilities for treatment of shock; and
- Facilities for transportation

For places up to 20 weeks (2nd trimester):

- All requirements for up to 12 weeks of pregnancy;
- Operation table and instruments for performing abdominal or gynecological surgery;
- Anesthetic equipment, resuscitation equipment and sterilization equipment;
- Drugs & parental fluids notified for emergency use, notified by Government of India from time to time

## **c. Medical Method of Abortion**

Termination of early pregnancy up to 7 weeks using two drugs Mifepristone (RU 486) and Misoprostol may be prescribed by a RMP.<sup>77</sup> Use of Mifepristone (RU 486) followed by Misoprostol is an established and safe method for terminating early pregnancy. In April 2002, Drug Controller of India approved marketing of Mifepristone for termination of early pregnancy, a method also known as Medical Abortion. Currently its use in India is recommended upto 7 weeks (49 days of amenorrhoea) in a facility with provision for safe abortion services and blood transfusion.<sup>78</sup>

77. Rule 5, see Explanation, of the MTP Rules 2003

78. Ministry of Health and Family Welfare, Annual Report 2004, Page 159, <http://mohfw.nic.in/WriteReadData/1892s/FAMILYWELFARE-38385935.pdf>

**d. Process of granting approval by the government**

Under Rule 5, sub rules (2)-(7) of the MTP Rules 2003, application in Form A shall be addressed to the Chief Medical Officer of the District by the owner of the place seeking approval. The CMO verifies or inspects the place to satisfy that termination of pregnancies can be done under safe & hygienic conditions, and recommends approval to the District Level Committee headed by CMO or District Health Officer. The Committee may approve such a place and issue a certificate of approval in Form B.

**d. Inspection of a place, Cancellation/ Suspension of certificate of approval**

A place approved under Rule 5 may be inspected by the Chief Medical Officer of the District, as often as may be necessary with a view to verify whether termination of pregnancies is being done therein under safe and hygienic conditions. If the Chief Medical Officer has reason to believe that there has been death of, or injury to, a pregnant woman at the place or that termination of pregnancies is not being done at the place under safe and hygienic conditions, he may call for any information or may seize any article, medicine, ampule, admission register or other document, maintained, kept or found at the place.<sup>79</sup>

If, after inspection of any place approved, the Chief Medical Officer of the District is satisfied that the facilities specified in Rule 5 are not being properly maintained therein and the termination of pregnancy at such place cannot be made under safe and hygienic conditions, he shall submit a report to the Committee giving the detail of the deficiencies or defects found at the place and the Committee can suspend or cancel the approval certificate after giving the owner an opportunity for representation. The owner can reapply to the Committee after making additions and improvements in the place. During suspension the place shall be deemed as non-approved.<sup>80</sup>

**e. Form of Consent**

The pregnant woman has to give her consent to abortion under sub-section (4) of section 3 of MTP Act 1971 which shall be given in Form C. In case the concerned female is minor or mentally ill, her guardian will have to sign the Consent Form.

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79. Rule 6 of the MTP Rules, 2003

80. Rule 6 of the MTP Rules, 2003

## **Regulations framed by States**

MTP Regulations lays down forms for opinion, maintenance of records, custody of forms and reporting of cases

Section 7 of the MTP Act of 1971 empowers the state governments to make Regulations to implement various provisions of section 7 of the Act which states -

“7. Power to make regulations -

(1) The State Government may, by regulations -

- (a) require any such opinion as is referred to in sub-section (2) of section 3 to be certified by a registered medical practitioner or practitioners concerned, in such form and at such time as may be specified in such regulations, and the preservation or disposal of such certificates ;
- (b) require any registered medical practitioner, who terminates a pregnancy, to give intimation of such termination and such other information relating to the termination as may be specified in such regulations ;
- (c) prohibit the disclosure, except to such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.

(2) The intimation given and the information furnished in pursuance of regulations made by virtue of clause (b) of sub-section (1) shall be given or furnished, as the case may be, to the Chief Medical Officer of the State.

(3) Any person who willfully contravenes or willfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine, which may extend to one thousand rupees.”

Various state governments have framed their own Regulations.

Punjab's Medical Termination of Pregnancy Regulations, 1976 states that every registered medical practitioner who terminates any pregnancy shall, within

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three hours of the termination of the pregnancy, certify such termination in form I.

But the penalty of only one thousand rupees against any person who willfully contravenes or wilfully fails to comply with the Regulation framed under Section 7 of the MTP Act<sup>81</sup> never act as a deterrent to the defaulting doctors/owners of facilities where abortions are conducted.

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81. Section 7, sub section (3) of the Medical Termination of Pregnancy Act of 1971

## 4. STATUS OF THE IMPLEMENTATION OF THE MTP ACT.

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The Medical Termination of Pregnancy Act (MTP Act) of 1971, which came into force from 1 April 1972, is considered to be a liberal legislation and intended to provide safe abortion facilities for those abortion cases that are permitted under the MTP Act. But *forty three years after medical termination of pregnancy was legalized in the country, access to safe abortion still remains a distant dream for many*. Several independent studies suggested that a large number of abortions were done with the aim of aborting the female foetuses. Increase in number of abortions has led to decline in child sex ratio.

### **i. Scale of illegal abortions and abortions under the MTP Act**

While the government of India does not have any official data on illegal abortions, the Ministry of Health and Family Welfare has unambiguously acknowledged that *“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.”*<sup>82</sup> The official number on abortions varies. According to the Ministry of Health and Family Welfare’s report “Health and Family Welfare Statistics in India 2013”, a total of 6,49,795 medical termination of pregnancies (or abortions) were performed during 2008-2009; 6,75,810 during 2009-2010; 6,48,469 during 2010-2011; 6,25,448 during 2011-2012 and 6,36,010 during 2012-2013.<sup>83</sup> Further on 6 August 2013, then Union Minister of Health and Family Welfare Mr Ghulam Nabi Azad told the Rajya Sabha that a total of 11.06 lakh abortions were recorded in the year 2008-09 in India.<sup>84</sup> But unofficial estimates made by independent research study of 2004 “Abortion Assessment Project - India (AAPI)” coordinated by CEHAT, Mumbai and Healthwatch, Delhi estimated a staggering 6.4 million (64 lakhs) abortions taking place annually in India. Of

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82. <http://164.100.47.132/LssNew/psearch/Result13.aspx?dbsl=4858>

83. Ministry of Health and Family Welfare, Government of India’s “Health and Family Welfare Statistics in India 2013”, Page 209, <https://nrhm-mis.nic.in/PubFWStatistics%202013/Complete%20Book.pdf>

84. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad in response to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013,

these, 1.6 million (16 lakhs) abortions i.e. 25% were performed by informal (traditional and/or medically non-qualified) abortion service providers.<sup>85</sup>

On 6 August 2013, then Union Minister of Health and Family Welfare Mr Ghulam Nabi Azad stated in the Rajya Sabha that no data on the numbers of unsafe abortions was available with the government of India.<sup>86</sup> Further, on 1 August 2014, then Union Minister of Health and Family Welfare, Dr Harsh Vardhan stated in the Lok Sabha that “*Data on the number of illegal, unsafe abortions has not been captured by any National Level Survey*”. He also stated that information on the number of doctors/clinics found involved in illegal abortions “is not available with the Ministry of Health and Family Welfare.”<sup>87</sup>

According to the Annual Report 2013-14 of the Ministry of Health and Family Welfare, “still an estimated 47,000 mothers continue to die every year due to causes related to pregnancy, childbirth and the post-partum period”.<sup>88</sup> As per Registrar General of India- Sample Registration System (RGI -SRS) (2001-03), 8% of maternal deaths in the country are attributed to “Abortions”.<sup>89</sup> The Ministry of Health and Family Welfare in its Annual Report 2013-14 also stated that 8% of the maternal deaths in India are due to unsafe abortions.<sup>90</sup> However, according to the Indian Council of Medical Research (ICMR), unsafe abortions account for 15-20 per cent of maternal mortality in India.<sup>91</sup> Ipas, an international NGO working on increasing access to safe abortion services, estimated that one woman dies of abortion-related causes every two hours in India.<sup>92</sup>

Official figures of abortions conducted in government-approved medical institutions from 1980-81 onwards are given below:

85. See <http://www.cehat.org/go/uploads/AapIndia/summary.pdf>

86. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad in response to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013

87. Statement of then Minister of Health and Family Welfare, Dr Harsh Vardhan in response to Unstarred Question No.3349 in the Lok Sabha on 01.08.2014

88. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 51, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

89. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad in response to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013

90. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad in response to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013. Also see, Annual Report 2013-14 of the Ministry of Health and Family Welfare, Page 54, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

91. See <http://icmr.nic.in/annual/nirrh/L%20Chapter%206%20109%20-%20114.pdf>

92. ‘Unsafe abortions killing a woman every two hours’, *The Hindu*, 6 May 2013 available at <http://www.thehindu.com/news/national/unsafe-abortion-killing-a-woman-every-two-hours/article4686897.ece>

**Table: Year-wise Medical Termination of Pregnancies performed<sup>93</sup>**

Year	No. of institutions approved for MTP work	No. of MTPs performed
1980-81	3,294	388,405
1981-82	3,908	433,527
1982-83	4,170	516,142
1983-84	4,553	547,323
1984-85	4,921	577,931
1985-86	5,528	583,704
1986-87	5,820	588,406
1987-88	6,126	584,870
1988-89	6,291	582,161
1989-90	6,681	596,357
1990-91	6,859	581,215
1991-92	7,121	636,456
1992-93	7,374	606,015
1993-94	7,628	612,291
1994-95	8,511	627,748
1995-96	8,722	570,914
1996-97	8,891	538,075
1997-98	9,119	512,823
1998-99	9,528	666,882
1999-00	9,645	708,512
2000-01	9,806	725,149
2001-02	9,244	770,714
2002-03	9,859	744,680
2003-04	11,032	763,126
2004-05	11,640	725,325
2005-06	12,046	721,859
2006-07	12,428	682,242
2007-08	12,510	641,786
2008-09	...	649,795
2009-10	...	675,810
2010-11	...	648,469
2011-12*	...	625,448
2012-13*	...	636,010

\* figures are provisional

.... Not available

93. Ministry of Health and Family Welfare, "Health and Family Welfare Statistics in India 2013", Page 208, <https://nrhm-mis.nic.in/PubFWStatistics%202013/Complete%20Book.pdf>

## ii. Link between illegal abortions and termination of female foetus

The decline in child sex ratio (CSR) in India is evident by comparing the census figures. In 1991, the CSR was 945 girls to 1000 boys which consistently come down to 927 in 2001 to further 914 in 2011.<sup>94</sup>

Foeticide cases recorded across India during 2000-2013, as per the Annual Reports for the years 2000 to 2013 of the National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India are give below:

Year	No. of cases of Foeticide	Increase/decrease over previous year
2004	86	-
2005	86	No change
2006	125	45.3% increase
2007	96	-23.2% (decrease)
2008	73	24.0% (decrease)
2009	123	68.5% increase
2010	111	-9.8% (decrease)
2011	132	18.9% increase
2012	210	59.1% increase
2013	221	5.2% increase

In a year-long sting operations from 25 May 2005 to 4 April 2006, two journalists namely Shripal Shaktawat and Meena Sharma belonging to *Sahara Samay* news channel secretly filmed 140 doctors willing to abort female foetuses, sometimes for a paltry amount of Rs 2,000, in private and government hospitals across Rajasthan, Madhya Pradesh, Uttar Pradesh and Gujarat. The errant doctors had affiliations with politicians, bureaucrats and top government officials. As soon as the sting operation was aired, the Rajasthan Medical Council cancelled the licences of 21 doctors but they were reinstated six months later. The errant doctors were never penalised; many of them were promoted despite overwhelming evidence against them.<sup>95</sup> After the effort of these two journalists was highlighted in a TV show “*Satyamev Jayate*” hosted by *Bollywood actor Amir Khan* in May 2012, the then Chief Minister of Rajasthan

94. See [http://censusindia.gov.in/2011-prov-results/data\\_files/mp/06Gender%20Composition.pdf](http://censusindia.gov.in/2011-prov-results/data_files/mp/06Gender%20Composition.pdf)

95. A sting op gets its bite back, *Tehelka Magazine*, Vol 9, Issue 21, Dated 26 May 2012, [http://archive.tehelka.com/story\\_main52.asp?filename=hub260512STING.asp](http://archive.tehelka.com/story_main52.asp?filename=hub260512STING.asp)

Ashok Gehlot announced setting up of fast-track courts for the speedy trial of female foeticide cases.<sup>96</sup> Within a year after they were set up, 31 convictions for violating the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act were recorded.<sup>97</sup>

Media reports have consistently highlighted termination of the female foetuses as given below.

On 20-21 June 2015, two cases of female foeticide were registered in north Gujarat. While a newborn girl child was found buried near Koita village in Patan district on 20 June, another female foetus was recovered from an open plot belonging to a trust in Nawa Sudasna village in Mehsana district on 21 June.<sup>98</sup>

On 17 June 2015, a six-month-old female foetus was found near Magpie Tourist Complex in Sector 16-A, Faridabad in Haryana.<sup>99</sup>

On 13 June 2015, a seven-month-old female foetus was found on roadside in Fakir Mohalla locality of the Pithampur industrial area, Mhow in Indore district of Madhya Pradesh.<sup>100</sup>

On 23 May 2015, a nearly six-month-old female foetus was found by the roadside in the old jail complex area in Gurgaon city of Haryana. It is the fifth foetus found in Gurgaon during the last two months, of which four foetuses were female.<sup>101</sup>

On 30 April 2015, a burnt female foetus was found in a garbage dump located a few metres from the residences of two cabinet ministers in the Chhattisgarh capital Raipur. The foetus, believed to be seven months old, had over 80% burns. Its skull, torso and an upper and a lower limb were intact. *“The body was found lying in debris along with medical wastes from a nursing home located close by.*

96. Aamir meets Gehlot, seeks fast-tracking of foeticide cases, The Hindu, 10 May 2012

97. <http://www.satyamevjayate.in/female-foeticide/to-the-chief-minister.aspx>

98. 2 female foetuses found dumped in N Gujarat, *The Times of India*, 22 June 2015, available at <http://timesofindia.indiatimes.com/city/rajkot/2-female-foetuses-found-dumped-in-N-Gujarat/articleshow/47762975.cms>

99. Six-month old female foetus found, *ABP News*, 17 June 2015, <http://www.abplive.in/india/2015/06/17/article621151.ece/Six-month-old-female-foetus-found>

100. Female foetus found in Mhow's Pithampur, *The Times of India*, 13 June 2015, <http://timesofindia.indiatimes.com/city/indore/Female-foetus-found-in-Mhows-Pithampur/articleshow/47659289.cms>

101. Four female foetuses found in Gurgaon within two months, police investigates, *CNN-IBN*, 23 May 2015, <http://www.ibnlive.com/news/india/female-foetus-995923.html>

*Everything dumped at the garbage site was burnt. The possibility of a forced abortion is not ruled out,*” - Virendra Chaturvedi, the officer in-charge of the Civil Lines police station.<sup>102</sup>

On 9 February 2015, a five-month-old female foetus was found in the toilet of a garment export company in Udyog Vihar in Gurgaon, Haryana.<sup>103</sup>

On 17 January 2015, a female foetus was found abandoned in a polybag near the main gate of Dayapuram Colony in Khatoli town in Muzaffarnagar district of Uttar Pradesh. It is suspected that it was thrown by some doctor of a nearby hospital or dispensary in the area.<sup>104</sup>

On 17 January 2015, a polythene bag containing a female foetus was found in a playground near Housing Board Colony at Mundasahi under Chaudwar police limits in Salepur, Cuttack district of Odisha.<sup>105</sup>

On 29 January 2014, a 5-month-old female foetus was found from an under construction building at Shobhagpura area, Udaipur in Rajasthan.<sup>106</sup>

On 5 January 2014, a female foetus was found in a vacant plot on Noorwala road in Ludhiana, Punjab.<sup>107</sup>

On 2 October 2011, the Udaipur Times (Rajasthan) published a photograph of a three-month-old female foetus that was found abandoned in a sewage canal at Savina, Udaipur. The police stated that “it is a clear case of abortion”.<sup>108</sup>

On 3 April 2011, sixteen foetuses, mostly female, were found in plastic jars near a private nursing home in Kishanganj district of Bihar while another was

102. Chhattisgarh: Burnt female foetus found near residences of ministers, *The Hindustan Times*, 30 April 2015, <http://www.hindustantimes.com/india-news/chhattisgarh-burnt-female-foetus-found-near-residences-of-ministers/article1-1342385.aspx>

103. Female fetus found in factory toilet, *The Times of India*, 10 February 2015, <http://timesofindia.indiatimes.com/city/gurgaon/Female-fetus-found-in-factory-toilet/articleshow/46180780.cms>

104. Female foetus found abandoned near hospital in Uttar Pradesh, *Mid-Day*, 17 January 2015, <http://www.mid-day.com/articles/female-foetus-found-abandoned-near-hospital-in-uttar-pradesh/15922164>

105. Female Foetus Found in Bag, *The New Indian Express*, 18 January 2015, <http://www.newindianexpress.com/states/odisha/Female-Foetus-Found-in-Bag/2015/01/18/article2624585.ece>

106. Female foetus found from Shobhagpura, *Udaipur Times*, 30 January 2014, <http://udaipurtimes.com/female-foetus-found-from-shobhagpura/>

107. Female foetus found on Noorwala road, *The Indian Express*, 6 January 2014, <http://archive.indianexpress.com/news/female-foetus-found-on-noorwala-road/1215910/>

108. Female Fetus Found in Sewage, *Udaipur Times*, 2 October 2011, <http://udaipurtimes.com/female-fetus-found-in-sewage/>

recovered near a garbage heap in Muzaffarpur town in Bihar. It appeared that the foetuses were of four to six months and all foetuses were kept in plastic jars with chemical water.<sup>109</sup>

### Underreporting under the MTP Act and female foeticide:

The data relating to termination of pregnancy under the MTP Act indicates absolute underreporting and its link with female foeticide. According to a Ministry of Health and Family Welfare report, 649,795 abortions were performed in government-approved MTP clinics during 2008-09, 675,810 abortions during 2009-10, 648,469 abortions during 2010-11, 625,448 abortions during 2011-12 and 636,010 abortions during 2012-13.<sup>110</sup>

State-wise medical termination of pregnancies performed during 2008-09 to 2012-13 is given below.<sup>111</sup>

Sl No	State/Union Territory/Agency	No. of Terminations					
		2008-09	2009-10	2010-11	2011-12*	2012-13*	Total
1	2	3	4	5	6	7	
I.	Major States (population > 20 million)						
1	Andhra Pradesh	6,826	7,490	5,315	6,794	6,417	32,842
2	Assam	78,155	70,294	69,937	70,866	64,057	<b>3,53,309</b>
3	Bihar	9,182	15,884	18,555	13,129	11,145	67,895
4	Chhattisgarh	7,375	5,151	4,323	2,832	2,531	22,212
5	Gujarat	14,931	29,980	17,914	21,863	20,213	1,04,901
6	Haryana	29,656	25,726	27,085	27,808	25,888	1,36,163
7	Jharkhand	3,862	17,665	10,613	6,454	9,079	47,673
8	Karnataka	22,366	22,660	22,107	31,763	31,514	1,30,410
9	Kerala	12,375	11,746	12,090	11,689	11,041	58,941

109. 17 foetuses found in plastic jars in Bihar garbage, *NDTV*, 4 April 2011, <http://www.ndtv.com/muzaffarpur-news/17-foetuses-found-in-plastic-jars-in-bihar-garbage-452077>

110. Source: Ministry of Health and Family Welfare, "Health and Family Welfare Statistics in India 2013", P 209, <https://nrhm-mis.nic.in/PubFWStatistics%202013/Complete%20Book.pdf>

111. Source: Ministry of Health and Family Welfare, "Health and Family Welfare Statistics in India 2013", P 209, <https://nrhm-mis.nic.in/PubFWStatistics%202013/Complete%20Book.pdf>

10	Madhya Pradesh	24,994	20,090	26,009	30,391	30,634	1,32,118
11	Maharashtra	90,990	86,339	109,806	109,282	148,254	5,44,671
12	Odisha	24,372	27,547	14,537	17,473	19,217	103,146
13	Punjab	12,267	11,003	11,204	9,171	9,799	53,444
14	Rajasthan	36,846	41,743	27,734	29,167	22,980	158,470
15	Tamil Nadu	59,793	60,359	57,893	61,718	59,320	299,083
16	Uttar Pradesh	72,522	83,952	81,289	63,826	58,966	360,555
17	West Bengal	50,460	58,916	58,774	52,249	48,692	269,091
<b>II</b>	<b>Smaller States</b>						
1	Arunachal Pradesh	990	957	973	1,192	1,574	5686
2	Delhi	45,285	32,318	29,298	21,620	20,798	149,319
3	Goa	1,175	978	919	963	1,118	5,153
4	Himachal Pradesh	2,010	2,785	2,068	1,742	1,691	10,296
5	Jammu & Kashmir	6,663	9,222	12,855	11,078	10,713	50,531
6	Manipur	6,525	6,968	6,307	5,660	4,148	29,608
7	Meghalaya	216	411	477	652	338	2,094
8	Mizoram	930	588	497	370	477	2,862
9	Nagaland	372	816	1,103	1,135	1,578	5,004
10	Sikkim	19	20	11	11	6	67
11	Tripura	7,417	7,485	5,934	4,533	3,890	29,259
12	Uttarakhand	11,047	8,653	8,316	7,373	6,723	42,112
<b>III</b>	<b>Union Territories</b>						
1	A&N Islands	260	98	153	126	209	846
2	Chandigarh	1,028	1,148	980	1,026	1,066	5,248
3	D&N Haveli	184	162	140	259	471	1,216
4	Daman & Diu	NA	NA	123	197	338	658
5	Lakshadweep	0	3	6	9	34	52
6	Puducherry	1,199	1,996	916	680	604	5,395
<b>IV</b>	<b>Other Agencies</b>						
1	M/O Defence	5,956	2,531	1,883	-	-	10370
2	M/O Railways	1,547	2,126	325	347	487	4832
	All India	649,795	675,810	648,469	625,448	636,010	3235532

\* Figures are provisional, NA = not available

On the other hand, an analysis of the figure on termination of pregnancies performed under the MTP Act in the major States where population is over 20 million suggests that the figure were under reported. It is assumed that States with more population will report more such cases. For example, Assam with a total population of 31,205,576 as per 2011 census reported a total of 3,53,309 cases of termination of pregnancies under the MTP Act during 2008-2009 to 2012-13. Whereas Uttar Pradesh with a population of 199,812,341 as per 2011 census reported a total of 3,60,555 cases during the same period. In other words, Uttar Pradesh despite having 159 million population more than Assam reported only 7,246 cases more than Assam. On the other hand, Maharashtra having a population of 112,374,333 as per 2011 census i.e. less than Uttar Pradesh reported 5,44,671 cases of termination of pregnancies under the MTP Act during the said period.<sup>112</sup>

This shows that the figures were under reported in Uttar Pradesh. Similarly, some other major States with population more than Assam as per 2011 census appears to be under reported. These States include Andhra Pradesh (32,842 cases) with over 84 million population; Bihar (67,895 cases) with population of over 100 million; Gujarat (1,04,901 cases) with population of over 60 million; Karnataka (1,30,410 cases) with population of over 61 million; Madhya Pradesh (1,32,118 cases) with population of over 72 million; Odisha (103,146 cases) with population of over 41 million; Rajasthan (158,470 cases) with population of over 68 million; Tamil Nadu (299,083 cases) with population of over 72 million; and West Bengal (269,091 cases) with population of over 91 million.<sup>113</sup>

Yet, as per the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs, in the last decade from 2004 to 2013, a total of 1,263 cases of foeticide were recorded in India, which included 221 cases in 2013,<sup>114</sup> 210 cases in 2012,<sup>115</sup> 132 cases in 2011,<sup>116</sup> 111 cases in 2010,<sup>117</sup> 123 cases in 2009,<sup>118</sup> 73

112. The population figures are taken from 2011 Population Census, Govt. of India <http://censusindia.gov.in/>

113. The population figures are taken from 2011 Population Census, Govt. of India <http://censusindia.gov.in/>

114. NCRB, "Crime In India 2013", Chapter 6

115. NCRB, "Crime In India 2012", Chapter 6

116. NCRB, "Crime In India 2011", Chapter 6

117. NCRB, "Crime In India 2010", Chapter 6

118. NCRB, "Crime In India 2009", Chapter 6

cases in 2008,<sup>119</sup> 96 cases in 2007,<sup>120</sup> 125 cases in 2006,<sup>121</sup> 86 cases in 2005,<sup>122</sup> and 86 cases in 2004.<sup>123</sup>

State-wise numbers of foeticide are given below<sup>124</sup>:

States/UTs	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total
Andhra Pradesh	0	1	5	0	2	6	1	7	1	7	30
Arunachal Pradesh	0	0	0	0	0	0	0	0	0	0	0
Assam	0	1	1	0	0	0	0	0	0	0	2
Bihar	1	0	0	0	0	5	0	1	1	1	9
Chhattisgarh	6	21	5	10	9	7	9	21	5	15	108
Goa	0	0	0	0	0	0	0	0	0	0	0
Gujarat	0	4	6	1	1	3	10	0	7	2	34
Haryana	15	8	9	4	5	3	2	5	28	21	100
Himachal Pradesh	2	1	5	1	2	1	0	0	0	2	14
Jammu & Kashmir	0	0	0	0	0	0	1	1	0	0	2
Jharkhand	1	0	1	0	0	0	0	1	0	4	7
Karnataka	4	7	13	7	5	7	4	1	3	0	51
Kerala	0	1	0	0	0	0	0	0	1	1	3
Madhya Pradesh	9	12	14	10	8	39	18	38	64	79	291
Maharashtra	15	4	10	1	2	17	5	12	22	17	105
Manipur	0	0	0	0	0	0	0	0	0	0	0
Meghalaya	0	0	0	0	0	0	0	0	0	0	0
Mizoram	0	0	0	0	0	0	0	0	0	0	0
Nagaland	0	0	0	0	0	0	0	0	0	0	0
Odisha	0	0	0	5	0	0	0	0	0	1	6
Punjab	8	12	22	35	24	23	15	15	25	12	191
Rajasthan	17	10	25	16	10	12	18	13	37	34	192
Sikkim	1	1	0	0	0	0	0	0	2	0	4
Tamil Nadu	0	0	0	0	0	0	0	0	0	1	1
Tripura	0	0	0	0	0	0	0	0	0	0	0

119. NCRB, "Crime In India 2008", Chapter 6

120. NCRB, "Crime In India 2007", Chapter 6

121. NCRB, "Crime In India 2006", Chapter 6

122. NCRB, "Crime In India 2005", Chapter 6

123. NCRB, "Crime In India 2004", Chapter 6

124. Source: NCRB, "Crime in India" Annual Reports from 2004 to 2013, available at <http://ncrb.gov.in/>

Uttar Pradesh	2	0	2	1	2	0	18	12	11	17	65
Uttarakhand	0	0	0	0	0	0	0	0	0	0	0
West Bengal	0	0	0	1	1	0	0	0	0	3	5
<b>Total States</b>	<b>81</b>	<b>83</b>	<b>118</b>	<b>92</b>	<b>71</b>	<b>123</b>	<b>101</b>	<b>127</b>	<b>207</b>	<b>217</b>	<b>1,220</b>
Union Territories											
A & N Islands	0	0	0	0	0	0	3	0	1	1	5
Chandigarh	0	0	0	0	0	0	0	0	0	0	0
D&N Haveli	1	0	0	0	0	0	0	0	0	0	1
Daman & Diu	0	0	0	0	0	0	0	0	0	0	0
Delhi	4	3	7	4	2	0	7	5	2	3	37
Lakshadweep	0	0	0	0	0	0	0	0	0	0	0
Puducherry	0	0	0	0	0	0	0	0	0	0	0
<b>Total UTs</b>	<b>5</b>	<b>3</b>	<b>7</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>10</b>	<b>5</b>	<b>3</b>	<b>4</b>	<b>43</b>
<b>Total All India</b>	<b>86</b>	<b>86</b>	<b>125</b>	<b>96</b>	<b>73</b>	<b>123</b>	<b>111</b>	<b>132</b>	<b>210</b>	<b>221</b>	<b>1,263</b>

During 2004 to 2013, the highest number of foeticide cases was reported from Madhya Pradesh (291), followed by Rajasthan (192), Punjab (191), Chhattisgarh (108), Maharashtra (105), Haryana (100), Uttar Pradesh (65), Karnataka (51), Delhi (37), Gujarat (34), Andhra Pradesh (30), Himachal Pradesh (14), Bihar (9), Jharkhand (7), Odisha (6), West Bengal and A&N Islands (5 each), Sikkim (4), Kerala (3), Assam and Jammu & Kashmir (2 each), Tamil Nadu and D&N Haveli (1 each).

The 12 states and UTs which did not register any foeticide case during the same period are Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Goa, Uttarakhand, Chandigarh, Daman & Diu, Lakshadweep and Puducherry.

According to the health department of Maharashtra's estimates, consideration of the average expected sex ratio of 952 and the child sex ratio of 883 in the 2011 census, indicate that Maharashtra may have seen around 4,68,680 female foeticide cases between 2001 and 2011, including 30,116 in Mumbai.<sup>125</sup>

125. Maharashtra cracks down on female foeticide, convicts around 70 doctors, *Daily News & Analysis*, 25 May 2014, <http://www.dnaindia.com/mumbai/report-maharashtra-cracks-down-on-female-foeticide-convicts-around-70-doctors-1991041>

## **vi. Arrest and conviction**

Arrests and convictions under the MTP Act are very rare in India.

As of 27 August 2010, only 23 doctors have been convicted under the PNDT Act and two other doctors were convicted under Medical Termination of Pregnancy (MTP) Act in Haryana which is infamous for female foeticide/infanticide. Further, 125 ultrasound machines were seized and registration of 216 ultrasound centres had been suspended or cancelled by the health officials for violation of these two Acts.<sup>126</sup>

In Maharashtra, 66 doctors and five relatives were convicted in 62 court cases for offences like declaring sex of the foetus and non-registration of clinics/centres under the PNDT Act and MTP Act. 50 of these doctors were sentenced to imprisonment in 46 cases and remaining 16 doctors were fined as of May 2014. The actions taken by the Maharashtra Medical Council (MMC) against these 46 doctors ranged from removal of registration, suspension of registration and suspension of registration till further orders of the courts and appellate courts. The Central Council of Homeopathy and the Central Council of Indian Medicine have also suspended the registration of six and three doctors respectively for violations of the PNDT Act and MTP Act.<sup>127</sup>

Some cases are highlighted below:

On 21 June 2015, a lady doctor identified as Dr Manju Chaudhary at Chaudhary Clinic, a private clinic in Narnaul, Mahendragarh district in Haryana was arrested on the charges of carrying out medical termination of pregnancy (MTP) illegally. Following a tip-off, a joint team of district administration and health department officials conducted a raid at 'Chaudhary Clinic' and arrested Dr Manju Chaudhary after laying a trap. The team sent a dummy customer to the doctor who convinced her for MTP in lieu of Rs 10,000 and later caught Dr Chaudhary while performing the illegal work. The team also recovered medicine and equipment used in terminating pregnancy. The accused doctor

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126. 23 doctors convicted under PNDT Act in Haryana, Daily Bhaskar, 27 August 2010, <http://daily.bhaskar.com/news/23-doctors-convicted-under-pndt-act-in-haryana-1301801.html>

127. Maharashtra cracks down on female foeticide, convicts around 70 doctors, *Daily News & Analysis*, 25 May 2014, <http://www.dnaindia.com/mumbai/report-maharashtra-cracks-down-on-female-foeticide-convicts-around-70-doctors-1991041>

was arrested under the Medical Termination of Pregnancy Act and her clinic was sealed.<sup>128</sup>

On 15 June 2015, a doctor couple identified as Dr Sudam Munde and his wife Saraswati accused of killing several female fetuses was sentenced to six years imprisonment and fined Rs 80,000 each by a court in Ambejogai in Beed district of Maharashtra. The case pertains to the year 2010 when in a sting operation conducted by an NGO the couple was caught red handed revealing sex of the unborn baby to a decoy. Two other cases were still pending against the accused doctor couple - a 2011 case wherein 15 female fetuses were found disposed of in a well on the field owned by Dr Munde and the second case of 2012 wherein a sugarcane worker Vijaymala Patekar died after undergoing an illegal abortion in the second trimester.<sup>129</sup>

On 21 August 2014, the police arrested four doctors in Sangli in Maharashtra for allegedly carrying out 107 illegal abortions during the past three years. The doctors were identified as Dr Sushma Patil, Dr Arjun Patil, Dr Santosh Patil and Dr Madhuri Jadhav of Shree Maternity and Surgical Hospital. The case was unearthed during a routine inspection by the Sangli Municipal Corporation on August 21 when officials sought to check records at Shree Maternity and Surgical Hospital and found that the nursing home had no documents with regard to the abortions that it had been performing. The nursing home had a register containing just the names of women who had undergone abortions there. Under the Medical Termination of Pregnancy (MTP) Act, 2003, it is mandatory for a hospital/gynaecologist to first obtain a woman's consent (Form C). The rules also prescribe recording of a doctor's opinion about the patient's health and reasons for abortions (Form 1), informing the government on the number of procedures carried out in a month (Form 2) and maintaining a register containing all these information (Form 3). Rohini Kulkarni, medical officer of Sangli Municipal Corporation stated that the nursing home was operating since 2011 but had not maintained any record of the abortions and hence the authorities termed the cases as "illegal

128. Lady doctor arrested for carrying out illegal termination of, *Business Standard*, 21 June 2015, available at [http://www.business-standard.com/article/pti-stories/lady-doctor-arrested-for-carrying-out-illegal-termination-of-115062100703\\_1.html](http://www.business-standard.com/article/pti-stories/lady-doctor-arrested-for-carrying-out-illegal-termination-of-115062100703_1.html)

129. Doctor couple, accused of female foeticide, get six years in prison, *Mumbai Mirror*, 16 June 2015, available at <http://www.mumbaimirror.com/mumbai/crime/Doctor-couple-accused-of-female-foeticide-get-six-years-in-prison/articleshow/47682095.cms>

abortions". A case was registered against the four doctors under the MTP Act and they were arrested.<sup>130</sup>

On 17 January 2014, two doctors, including a woman, were arrested by police after health department officials found them conducting sex determination tests on pregnant women in Yamunanagar district of Haryana. Both doctors, Nirmal Singh and Anu, escaped from their private hospital, Nirmal Hospital, on Radaur road near Yamunanagar after health officials raided the premises following complaints that sex determination tests were being done on pregnant women to ascertain the sex of the unborn child. The police arrested the duo while trying to flee. During the raid, MTP disposable instruments were found by the health department team. Two of these were used on patients. A case was registered against both the doctors for violating the MTP Act.<sup>131</sup>

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130. 4 Sangli doctors held for performing 107 illegal abortions, *Daily News & Analysis*, 25 August 2014, available at <http://www.dnaindia.com/mumbai/report-4-sangli-doctors-held-for-performing-107-illegal-abortions-2013321>

131. Haryana: 2 doctors arrested for sex determination test, *CNN-IBN*, 17 January 2014, <http://www.ibnlive.com/news/india/haryana-2-doctors-arrested-for-sex-determination-test-662512.html>

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## 5. THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2014

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On 29<sup>th</sup> October 2014, the Ministry of Health & Family Welfare made public the draft Medical Termination of Pregnancy (Amendment) Bill, 2014 and sought views/suggestions from the interested stakeholders and general public to be submitted on or before 10<sup>th</sup> November 2014.<sup>132</sup> The Union Minister of Health and Family Welfare, Shri Jagat Prakash Nadda, has claimed that the Draft Amendment Bill had been prepared following extensive deliberations within an Expert Committee of representatives from Central & State Government Ministries/Departments, academic institutions including Medical Colleges, professional bodies & associations, development partners, technical agencies, NGOs and civil society.<sup>133</sup>

The draft Medical Termination of Pregnancy (Amendment) Bill 2014 proposes to allow AYUSH practitioners (excluding Yoga and Naturopathy), homeopaths, nurses and auxiliary nurse midwife (ANM) to conduct abortion services.<sup>134</sup> The Government is of the view that expanding the provider base by way of including AYUSH practitioners, homeopath and paramedical staff (excluding Yoga and Naturopathy) in the public sector to administer medical methods of abortion on pregnant women with strict conditionalities including requisite training and certification will enhance the access and availability of safe abortion services to women without compromising on quality of service.<sup>135</sup>

The Draft Amendment Bill also proposes to increase the legal time limit for abortion from 20 weeks to 24 weeks of gestation on the recommendation of the National Commission for Women (NCW).<sup>136</sup>

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132. Notification No. 12015/49/2008-MCH issued by the Ministry of Health & Family Welfare, Government of India dated 29<sup>th</sup> October 2014

133. Statement of Minister of Health and Family Welfare Shri Jagat Prakash Nadda in response to Unstarred Question No. 1074 in the Rajya Sabha on 2 December 2014

134. Section 2, clause (d) of the Medical Termination of Pregnancy (Amendment) Bill, 2014

135. Statement of Minister of Health and Family Welfare Shri Jagat Prakash Nadda in response to Unstarred Question No. 908 in the Rajya Sabha on 5 May 2015

136. Statement of Minister of Health and Family Welfare Shri Jagat Prakash Nadda in response to Unstarred Question No. 1074 in the Rajya Sabha on 2 December 2014

The NCW recommended the Government of India to extend the existing 20 weeks time limit to 24 weeks for abortion under the MTP Act. The NCW claimed that *“No couple will wait till 20 weeks of pregnancy to abort a foetus on the basis of gender. Such offenders wait for barely 12 weeks or so to seek abortion on the grounds that contraception had failed.”*<sup>137</sup> However, there were cases of female foeticide being conducted even after 20 weeks as highlighted below:

On 2 June 2012, Dr Shivaji Sanap, who ran a private maternity clinic on Jalna Road in Beed, Maharashtra, was arrested and booked under various sections of IPC, Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act and MTP Act, for carrying out three illegal abortions. Two female foetuses were found dumped in the dry basin of Bindusara river in Beed city. The post-mortem reports of the two female foetuses revealed that one foetus was of eight month and six days and the other was of five months and eight days. Another female foetus was six-month old.<sup>138</sup>

On 17 June 2015, a six-month-old female foetus was found near Magpie Tourist Complex in Sector 16-A, Faridabad in Haryana.<sup>139</sup>

On 13 June 2015, a seven-month-old female foetus was found on roadside in Fakir Mohalla locality of the Pithampur industrial area, Mhow in Indore district of Madhya Pradesh.<sup>140</sup>

On 23 May 2015, a nearly six-month-old female foetus was found by the roadside in the old jail complex area in Gurgaon city of Haryana. It is the fifth foetus found in Gurgaon during the last two months, of which four foetuses were female.<sup>141</sup>

137. Allow abortions up to 24 weeks, national women's panel says, The Times of India, 3 February 2013, <http://timesofindia.indiatimes.com/india/Allow-abortions-up-to-24-weeks-national-womens-panel-says/articleshow/18313104.cms>

138. Doctor Arrested for Conducting 3 Illegal Abortions, *Outlook, India*, 3 June 2012, <http://www.outlookindia.com/news/article/doctor-arrested-for-conducting-3-illegal-abortions/764597>

139. Six-month old female foetus found, *ABP News*, 17 June 2015, <http://www.abplive.in/india/2015/06/17/article621151.ece/Six-month-old-female-foetus-found>

140. Female foetus found in Mhow's Pithampur, The Times of India, 13 June 2015, <http://timesofindia.indiatimes.com/city/indore/Female-foetus-found-in-Mhows-Pithampur/articleshow/47659289.cms>

141. Four female foetuses found in Gurgaon within two months, police investigates, *CNN-IBN*, 23 May 2015, <http://www.ibnlive.com/news/india/female-foetus-995923.html>

On 30 April 2015, a burnt female foetus was found in a garbage dump located a few metres from the residences of two cabinet ministers in the Chhattisgarh capital Raipur. The foetus, believed to be seven months old, had over 80% burns. Its skull, torso and an upper and a lower limb were intact. *“The body was found lying in debris along with medical wastes from a nursing home located close by. Everything dumped at the garbage site was burnt. The possibility of a forced abortion is not ruled out,”* - Virendra Chaturvedi, the officer in-charge of the Civil Lines police station.<sup>142</sup>

On 9 February 2015, a five-month-old female foetus was found in the toilet of a garment export company in Udyog Vihar in Gurgaon, Haryana.<sup>143</sup>

On 29 January 2014, a 5-month-old female foetus was found from an under construction building at Shobhagpura area, Udaipur in Rajasthan.<sup>144</sup>

The intent of the amendment is good but it may lead to more sex selective abortions if the PCPNDT Act and MTP Act are not strictly implemented. Given the poor sex ratio, there is likelihood that extending the abortion time limit will be further abused to commit female foeticide.

While the medical fraternity has welcomed most of the amendments, Indian Medical Association (IMA) and FOGSI (Federation of Obstetric and Gynaecological Societies of India) have raised objections to expand provider base to include AYUSH and other non-MBBS practitioners for conducting abortion services. According to them MTP is to be done only by registered medical practitioners who are all trained qualified MBBS doctors, as defined in the current MTP Act, 1971.<sup>145</sup> The IMA believes that inclusion of AYUSH

142. Chhattisgarh: Burnt female foetus found near residences of ministers, *The Hindustan Times*, 30 April 2015, <http://www.hindustantimes.com/india-news/chhattisgarh-burnt-female-foetus-found-near-residences-of-ministers/article1-1342385.aspx>

143. Female fetus found in factory toilet, *The Times of India*, 10 February 2015, <http://timesofindia.indiatimes.com/city/gurgaon/Female-fetus-found-in-factory-toilet/articleshow/46180780.cms>

144. Female foetus found from Shobhagpura, *Udaipur Times*, 30 January 2014, <http://udaipurtimes.com/female-foetus-found-from-shobhagpura/>

145. Statement of Minister of Health and Family Welfare Shri Jagat Prakash Nadda in response to Unstarred Question No. 908 in the Rajya Sabha on 5 May 2015

doctors, nurses and ANMs in the proposed MTP Act would be a retrograde step as they are not equipped/trained to handle emergency situations.<sup>146</sup>

The Indian Medical Association has accused the government of making the amendments based on “an unscientific study done by Population Council in 2012 which showed that trained nurses and Ayurved physicians provide medical abortion as safely as MBBS doctors.” The IMA’s letter to the Prime Minister and the Union Health Ministry pointed out that “At the outset, it may be noted that in 2012 when the MTP Act 1971 was in place which does not allow anyone other than an MBBS doctor registered under the Act to conduct abortions, how could the Ayurveda doctors and nurses carry out MTPs as per the study conducted by Population Council. This smells of malpractices in the medical field”. The IMA also stated that the proposal of permitting the non-MBBS doctors and paramedical staff to conduct MTPs is also against the provisions of the Clinical Establishments Act, which does not recognize even paramedical personnel trained by the doctors for conducting medical procedures. If the inclusion of non-MBBS medical practitioners is allowed, this would endanger the lives of thousands of patients opting for MTP. The IMA has asked the government to withdraw this proposed Bill immediately in the better interest of the health of general public.<sup>147</sup>

Following widespread objections against inclusion of non-MBBS doctors, namely Ayush doctors, homoeopaths and nurses to conduct MTP which could lead to unsafe abortions, the government of India has reportedly delayed the introduction of the Medical Termination of Pregnancy (MTP) Amendment Bill in the Parliament.<sup>148</sup> However, the Ministry of Health and Family Welfare seems to be adamant to bring amendments that would extend the gestation period from 20 weeks to 24 weeks for “special categories”, which is likely to include single women with unwanted pregnancy, disabled and other vulnerable women.<sup>149</sup>

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146. City body of doctors opposes amending MTP Act, writes to health ministry, *Indian Express*, 12 November 2014, <http://indianexpress.com/article/cities/ludhiana/city-body-of-doctors-opposes-amending-mtp-act-writes-to-health-ministry/>

147. IMA opposes government’s proposed amendments to the MTP Act, *The Economic Times*, 6 November 2014, [http://articles.economicstimes.indiatimes.com/2014-11-06/news/55835712\\_1\\_indian-medical-association-ima-members-20-weeks](http://articles.economicstimes.indiatimes.com/2014-11-06/news/55835712_1_indian-medical-association-ima-members-20-weeks)

148. Proposed law set to allow abortion up to 24 weeks, *The Times of India*, 29 June 2015, <http://timesofindia.indiatimes.com/india/Proposed-law-set-to-allow-abortion-up-to-24-weeks/articleshow/47857851.cms>

149. Proposed law set to allow abortion up to 24 weeks, *The Times of India*, 29 June 2015, <http://timesofindia.indiatimes.com/india/Proposed-law-set-to-allow-abortion-up-to-24-weeks/articleshow/47857851.cms>

## **Details of the proposed amendments**

### **a. Registered Health care providers**

Section 2, clause (d) of the Medical Termination of Pregnancy Act of 1971 defines “registered medical practitioner” as “a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.”

The Medical Termination of Pregnancy (Amendment) Bill, 2014 seeks to substitute Section 2, clause (d) with the following clauses, namely:

“(d) “registered health care provider” means –

- (I) a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, whose name has been entered in a Indian Medical Register or State Medical Register; or
  - (II) a practitioner who possesses –
    - (i) any recognised medical qualification of Ayurveda, Unani or Siddha as defined in clause (h) of section 2 of the Indian Medicine Central Council Act, 1970, whose name has been entered in the Central Register or State Register of Indian medicine; or
    - (ii) any recognised medical qualification of Homoeopathy as defined in clause (g) of section 2 of the Homoeopathy Central Council Act, 1973, whose name has been entered in the Central Register or State Register of Homoeopathy; or
    - (iii) a nurse or auxiliary nurse midwife who possesses any recognized qualification in general nursing or auxiliary nurse midwifery as defined in section 10 of the Indian Nursing Council Act, 1947 and who has been enrolled as a nurse or auxiliary nurse midwife in the Indian Nurses Register or the State Register;
- (e) “prescribed” means prescribed by rules made under this Act;
-

(f) “termination of pregnancy” means a procedure to terminate a pregnancy by using medical or surgical methods.”

### **b. Termination of pregnancy up to 24 weeks**

Sub section (2) of Section 3 of the Medical Termination of Pregnancy Act of 1971 provides that an unintended pregnancy may be terminated within the first 12 weeks of pregnancy on the opinion of one registered medical practitioner (RMP). But opinion of two RMPs is required for termination of pregnancy between 12 and 20 weeks.<sup>150</sup>

The MTP (Amendment) Bill 2014 seeks to amend the sub section (2) of Section 3 in the following ways:

- Pregnancy can be terminated by a registered health care provider “on request” of the pregnant woman where the length of the pregnancy does not exceed twelve weeks. No conditions are attached for abortion upto 12 weeks.
- Pregnancies can be terminated up to 24 weeks if a registered health care provider is of the opinion, formed in good faith, that (a) 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 (b) there is a substantial risk that if the child were born, it would suffer from serious physical or mental abnormalities. The reasons for abortion, for example, can be pregnant by rape or as a result of failure of family planning methods.
- Pregnancies can be terminated at any time (i.e. beyond 24 weeks) by a registered health care provider “where the termination of such pregnancy is necessitated by the diagnosis of any of the substantial foetal abnormalities as may be prescribed.”
- Further, pregnancies can be terminated at any duration of pregnancy or place (not necessarily, a government certified health facility) by a registered health care provider, without anybody else opinion, in cases where the termination of pregnancy is “immediately necessary to save the life of the pregnant woman.”

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150. Section 3, sub section (2) of the Medical Termination of Pregnancy Act of 1971

The NCW's recommendation for extension of gestation limit up to 24 weeks for conducting MTP in case of certain vulnerable categories of women e.g. rape survivors, victims of incest, single (unmarried/ divorced/ widowed) and women with disabilities and also for cases of severe foetal abnormalities where these were detected after the existing gestation limit of 20 weeks<sup>151</sup>, is deeply flawed. The current MTP Act of 1971 under section 5 already addresses the most deserving cases by allowing termination of a pregnancy at any length of pregnancy if "termination of such pregnancy is immediately necessary to save the life of the pregnant woman." Further, sub-section (2), clause (C) of the MTP (Amendment) Bill of 2014 such relaxation has also been extended to cases like "substantial foetal abnormalities" and pregnancy can be terminated at any length of the pregnancy. Therefore, to increase the gestation period up to 24 weeks for conducting MTP for "certain vulnerable categories of women e.g. rape survivors, victims of incest, single (unmarried/ divorced/ widowed) and women with disabilities" is unnecessary and unwarranted as this may only lead to selective sex determination and killing of the female foetus.

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151. Statement of Minister of Health and Family Welfare Shri Jagat Prakash Nadda in response to Unstarred Question No. 1074 in the Rajya Sabha on 2 December 2014. Also see, Allow abortions up to 24 weeks, national women's panel says, *The Times of India*, 3 February 2013, <http://timesofindia.indiatimes.com/india/Allow-abortion-up-to-24-weeks-national-womens-panel-says/articleshow/18313104.cms>

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## 6. POSSIBLE IMPACT ON FEMALE FOETICIDE FROM HISTORICAL EXPERIENCES SINCE 1971

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On 6 August 2013, then Union Minister of Health and Family Welfare Mr Ghulam Nabi Azad informed the Rajya Sabha that as per the Central Health Management and Information System of National Rural Health Mission, a total of 11.06 lakh abortions were recorded in the year 2008-09 in India.<sup>152</sup> As per the latest data on Maternal Mortality Ratio (MMR) from the Sample Registration System of Registrar General of India (RGI-SRS), MMR in the country is 212 per 100,000 live births for the period 2007-09 which translates into an approximate number of 56,000 maternal deaths in one year.<sup>153</sup> Of these, eight percent of maternal deaths in India are attributed to unsafe abortions, according to the Ministry of Health and Family Welfare.<sup>154</sup> However, the Indian Council of Medical Research (ICMR) estimate stated that unsafe abortions accounted for 15-20 per cent of maternal mortality in India.<sup>155</sup>

Study conducted by Indian Council of Medical Research (ICMR) suggests that MTP is being used as a family planning method and to eradicate the female child before she is born. A total of 1851 women who had an induced abortion during the previous 3 years were interviewed in 13 states. The study found that main reason for seeking abortion was “don’t need any more children” (42%) and “don’t need any more daughters” (12.4%). Around 46% women accessed abortion services from private clinics as compared to government hospital (37%) and primary health centre/community health centre (PHC/CHC) (14.0%). The decision to terminate pregnancy and place of abortion was made by the husband in 42.8% and 52.5% respectively.<sup>156</sup>

According to the Annual Report 2013-14 of the Ministry of Health and Family Welfare, “The Child Sex Ratio (CSR) for the age group of 0-6 years as per the

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152. Statement of then Minister of Health and Family Welfare Mr Ghulam Nabi Azad in response to Unstarred Question No. 257 in the Rajya Sabha on 6 August 2013

153. Statement of then Minister of State in the Ministry of Health and Family Welfare, Shri Sudip Bandyopadhyay in response to Unstarred Question No. 2536 in the Rajya Sabha on 4 September 2012

154. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 54, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

155. See <http://icmr.nic.in/annual/nirrh/L%20Chapter%206%20109%20-%20114.pdf>

156. Indian Council of Medical Research, Annual Report 2003-2004, P 79, <http://icmr.nic.in/annual/hqds2004/reproductive.pdf>

2011 census (provisional) has dipped further to 919 girls as against 927 per thousand boys recorded in 2001 Census. This negative trend reaffirms the fact that the girl child is more at risk than ever before.<sup>157</sup> The Ministry of Health and Family Welfare pointed out some of the reasons for low levels of sex ratio as “son preference, neglect of the girl child resulting in higher mortality at younger age, female infanticide, female foeticide, higher maternal mortality and male bias in enumeration of population”. The Ministry further stated, “Sex determination techniques have been in use in India since 1975 primarily for the determination of genetic abnormalities. However, these techniques were widely misused to determine the sex of the foetus and subsequent elimination if the foetus was found to be female”.<sup>158</sup>

The impact on female foeticide is such that a study, based on a national survey of 1.1 million Indian households and published in *Lancet* journal on 9 January 2006, claimed that nearly 500,000 female babies were lost in India every year because of selective abortion. The study claimed that 10 million female births may have been aborted in India in the past 20 years. The study discovered that the “girl deficit” was more common among educated families, especially in homes where the first-born was a girl.<sup>159</sup>

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157. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 27, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

158. Ministry of Health and Family Welfare, Annual Report 2013-14, Page 27, [http://nrhm.gov.in/images/pdf/media/publication/Annual\\_Report-Mohfw.pdf](http://nrhm.gov.in/images/pdf/media/publication/Annual_Report-Mohfw.pdf)

159. 10 million female births aborted in India: study, *The Hindu*, 10 January 2006, <http://www.thehindu.com/todays-paper/tp-international/10-million-female-births-aborted-in-india-study/article3237700.ece>

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# ANNEXURE I: THE MTP ACT

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## The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971)

An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:

### **1. Short title, extent and commencement.-**

- (1) This Act may be called the Medical Termination of Pregnancy Act, 1971.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

### **2. Definitions.-**In this Act, unless the context otherwise requires,-

- (a) “guardian” means a person having the care of the person of a minor or a lunatic;
- (b) “lunatic” has the meaning assigned to it in Sec.3 of the Indian Lunacy Act, 1912 (4 of 1912) ;
- (c) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority,
- (d) “registered medical practitioner” means a medical practitioner who possesses any recognized medical qualification as defined in Cl.(h) of Sec. 2 of the Indian Medical Council Act, 1956 (102 of 1956), whose name has been entered in a State Medical Register and who has such experience or training in gynecology and obstetrics as may be prescribed by rules made under this Act.

### **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 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 as 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 presumed to constitute a grave injury to the mental health of the pregnant woman.

- (3) In determining whether the continuance of 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 Cl.(a), no pregnancy shall be terminated except with the consent of the pregnant woman.
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**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.

**5. Sections 3 and 4 when not to apply.-**

- (1) The provisions of Sec.4 and so much of the provisions of sub-section (2 of Sec. 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioner, shall not apply to the termination of a pregnancy by the registered medical practitioner in 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 (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified.

**6. Power to make rules.-4**

- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
  - (a) the experience or training, or both, which a registered medical practitioner shall have if he intends to terminate any pregnancy under this Act ; and
  - (b) such other matters as are required to be or may be, provided by rules made under this Act.
- (3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while

it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and If, before the expiry of the session which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **7. Power to make regulations.-**

- (1) The State Government may, by regulations,-
  - (a) require any such opinion as is referred to in sub-section (2) of Sec. 3 to be certified by a registered medical practitioner or practitioners concerned in such form and at such time as be specified in such regulations, and the preservation or disposal of such certificates;
  - (b) require any registered medical practitioner, who terminates a pregnancy to give intimation of such termination and such other information relating to the termination as maybe specified in such regulations;
  - (c) prohibit the disclosure, except to such persons and for such purposes as may be specified in such regulations, of intimations given or information furnished in pursuance of such regulations.
- (2) The intimation given an the information furnished in pursuance of regulations made by virtue of Cl.(b) of Sub-section(1) of shall be given or furnished, as the case may be, to the Chief Medical Officer of the State..
- (3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of any regulation made under sub-section (1) shall be liable to be punished with fine which may extend to one thousand rupees.

8. Protection of action taken in good faith.- No suit for other legal proceedings shall lie against any registered medical practitioner for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this act.

# ANNEXURE II: THE MTP RULES

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## MTP Rules

### Back

**Ministry of Health and Family Welfare  
(Department of Family Welfare)**

**Notification**

**New Delhi, the 13th June, 2003**

G.S.R. 485(E) - In exercise of powers conferred by section 6 of the Medical Termination of Pregnancy Act, 1971 (34 of 1971), the Central Government hereby makes the following rules, namely :-

#### **1. Short title and commencement**

- (1) These rules may be called the Medical Termination of Pregnancy Rules, 2003.
- (2) They shall come into force on the date of their publication in the Official Gazette.

#### **2. Definitions** - In this rules, unless the context otherwise requires,

- (a) Act means the Medical Termination of Pregnancy Act, 1971 (34 of 1971) and the Medical Termination of Pregnancy (Amendment) Act, 2002 (64 of 2002).
- (b) Chief Medical Officer of the District means the Chief Medical Officer of a District, by whatever name called;
- (c) Form means a form appended to these rules;
- (d) Owner in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.
- (g) Committee means a committee constituted at the district level under the proviso to clause (b) of section 4 read Rule 3.

### **3. Composition and tenure of District level Committee**

- (1) One member of the district level Committee shall be the Gynaecologist/ Surgeon/Anaesthetist and other members from the local medical profession, non-governmental organization, and Panchayati Raj Institution of the District. Provided that one of the members of the Committee shall be a woman.
- (2) Tenure of the Committee shall be for two calendar years and the tenure of the non-government members shall not be more than two terms.

### **4. Experience and training under clause (d) of Section 2:-**

For the purpose of clause (d) of section (2), a registered medical practitioner shall have one or more of the following experience or training in gynaecology and obstetrics, namely;

- (a) In the case of a medical practitioner, who was registered in a State Medical Register immediately before the commencement of the Act, experience in the practice of gynaecology and obstetrics for a period of not less than three years;
- (b) In the case of a medical practitioner, who is registered in a State Medical Register:-
  - (i) if he has completed six months of house surgency in gynaecology and obstetrics; or
  - (ii) unless the following facilities are provided therein, if he had experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology ; or
- (c) if he has assisted a registered medical practitioner in the performance of twenty-five cases of medical termination of pregnancy of which at least five have been performed independently, in a hospital established or maintained or a training institute approved for this purpose by the government.
  - (i) This training would enable the Registered Medical Practitioner (RMP) to do only 1st Trimester terminations (up to 12 weeks of gestation).

- (ii) For terminations up to twenty weeks the experience or training as prescribed under sub rules (a), (b) and (d) shall apply .
- (d) In case of a medical practitioner who has been registered in a State Medical Register and who holds a post-graduate degree or diploma in gynaecology and obstetrics, the experience or training gained during the course of such degree or diploma.

### **5. Approval of a place, -**

- (1) No place shall be approved under clause (b) of section 4,
  - (i) Unless the Government is satisfied that termination of pregnancies may be done therein under safe and hygienic conditions; and
  - (ii) Unless the following facilities are provided therein, namely: -

In case of first trimester, that is, up to 12 weeks of pregnancy:-

a gynecology examination/labour table, resuscitation and sterilization equipment, drugs and parental fluid, back up facilities for treatment of shock and facilities for transportation; and

in case of second trimester, that is, up to 20 weeks of pregnancy:-

- (a) an operation table and instruments for performing abdominal or gynaecological surgery;
- (b) anaesthetic equipment, resuscitation equipment and sterilization equipment;
- (c) drugs and parental fluids for emergency use, notified by Government of India from time to time.

### **Explanation :**

In the case of termination of early pregnancy up to 7 weeks using RU-486 with Misoprostol, the same may be prescribed by a Registered Medical Practitioner (RMP) as defined under clause (d) of section 2 of the Act and Section 4 of MTP Rules, at his clinic, provided such a Registered Medical Practitioner has access to a place approved under Section 4 of the MTP Act, 1971 read with MTP Amendment Act, 2002 and Rules 5 of the MTP Rules. For the purpose of access, the RMP should display a Certificate to this effect from the owner of the approved place.

- (2) Every application for the approval of a place shall be in a Form A and shall be addressed to the Chief Medical Officer of the District.
- (3) On receipt of an application under sub-rule (2), the Chief Medical Officer of the District may verify any information contained, in any such application or inspect any such place with a view to satisfying himself that the facilities referred to in sub-rule (1) are provided, and that termination of pregnancies may be made under safe and hygienic conditions.
- (4) Every owner of the place which is inspected by the Chief Medical Officer of the District shall afford all reasonable facilities for the inspection of the place.
- (5) The Chief Medical Officer of the District may, if he is satisfied after such verification, enquiry or inspection, as may be considered necessary, that termination of pregnancies may be done under safe and hygienic conditions, at the place, recommended the approval of such place to the Committee.
- (6) The Committee may after considering the application and the recommendations of the Chief Medical Officer of the District approve such place and issue a certificate of approval in Form B.
- (7) The certificate of approval issued by the Committee shall be conspicuously displayed at the place to be easily visible to persons visiting the place.
- (8) The place shall be inspected within 2 months of receiving the application and certificate of approval may be issued within the next 2 months, or in case any deficiency has been noted, within 2 months of the deficiency having been rectified by the applicant.
- (9) On the commencement of these rules, a place approved in accordance with the Medical Termination of Pregnancy Rules, 1975 shall be deemed to have been approved under these Rules.

## **6. Inspection of a place, -**

- (1) A place approved under rule 5 may be inspected by the Chief Medical Officer of the District, as often as may be necessary with a view to verify whether termination of pregnancies is being done therein under safe and hygienic conditions.

- (2) If the Chief Medical Officer has reason to believe that there has been death of, or injury to, a pregnant woman at the place or that termination of pregnancies is not being done at the place under safe and hygienic conditions, he may call for any information or may seize any article, medicine, ampule, admission register or other document, maintained, kept or found at the place.
- (3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to seizure shall, so far as it may , apply to seizure made under sub-rule (2).

#### **6. Cancellation or suspension of certificate of approval, -**

- (1) If, after inspection of any place approved under rule 5, the Chief Medical Officer of the District is satisfied that the facilities specified in rule 5 are not being properly maintained therein and the termination of pregnancy at such place cannot be made under safe and hygienic conditions, he shall make a report of the fact to the Committee giving the detail of the deficiencies or defects found at the place and the committee may, if it is satisfied, suspend or cancel the approval provided that the committee shall give an opportunity of making representation to the owner of the place before the certificate issued under rule 5 is cancelled.
- (2) Where a certificate issued under rule 5 is cancelled the owner of the place may make such additions or improvements in the place and there after, he may make an application to the Committee for grant of approval under rule 5.
- (3) In the event of suspension of a certificate, of approval, the place shall not be deemed to be an approved place during the suspension for the purposes of termination of pregnancy from the date of communication of the order of such suspension.

#### **7. Review :-**

- (1) The owner of a place, who is aggrieved by an order made under rule 7, may make an application for review of the order to the Government within a period of sixty days from the date of such order:

Provided that the Government may condone any delay in case it is satisfied that applicant was prevented by sufficient cause to make application within time.

- (2) The Government may, after giving the owner an opportunity of being heard, confirm, modify or reverse the order.

### **8. Form of consent, -**

The consent referred to in sub-section (4) of section 3 shall be given in Form C.

### **9. Repeal and saving, -**

The Medical Termination of Pregnancy Rules, 1975, are hereby repealed except as respects things done or omitted to be done before such repeal.

### **FORM A**

( See sub-rule (2) of rule 5 )

Form of application for the approval of a place under clause (b) of section 4

Category of approved place:

- A Pregnancy can be terminated upto 12 weeks
- B Pregnancy can be terminated upto 20 weeks
  - 1. Name of the place ( in capital letters )
  - 2. Address in full
  - 3. Non-Government/Private/Nursing Home/Other Institutions
  - 4. State, if the following facilities are available at the place

### **Category A**

- i) Gynecological examination / labour table.
- ii) Resuscitation equipment.
- iii) Sterilization equipment.
- iv) Facilities for treatment of shock, including emergency drugs.
- v) Facilities for transportation, if required.

**Category B**

- (ii) An operation table and Instruments for performing abdominal or gynaecological surgery.
- (iii) Drugs and parental fluid in sufficient supply for emergency cases.
- (iv) Anaesthetic equipment, resuscitation equipment and sterilization equipment.

Place :

Date :

Signature of the owner of the place

**FORM B**  
**(See sub-rule (6) of rule 5)**

**Certificate of approval.**

The place described below is hereby approved for the purpose of the Medical termination of Pregnancy Act, 1971 ( 34 of 1971).

AS READ WITHIN UPTO ..... WEEKS

Name of the Place .....

Address and other descriptions .....

Name of the owner .....

Place:

Date:

to the Government of the \_\_\_\_\_

**FORM C**

(See rule 8)

I \_\_\_\_\_ daughter/wife of \_\_\_\_\_

aged about \_\_\_\_\_ years of \_\_\_\_\_

\_\_\_\_\_

(here state the permanent address)

at present residing at \_\_\_\_\_

do hereby give my consent to the termination of my pregnancy at \_\_\_\_\_

\_\_\_\_\_

(State the name of place where the pregnancy is to be terminated)

Place:

Date :

Signature

(To be filled in by guardian where the woman is a mentally ill person or minor )

I \_\_\_\_\_ son/daughter/wife of \_\_\_\_\_

aged about \_\_\_\_\_ years of \_\_\_\_\_

at present residing at \_\_\_\_\_

(Permanent address ) \_\_\_\_\_

\_\_\_\_\_ do hereby give my consent to the termination of the

pregnancy of my ward \_\_\_\_\_ who is a minor/  
lunatic at \_\_\_\_\_ (place of termination of my pregnancy)

Place :

Date :

# ANNEXURE III: THE MTP AMENDMENT BILL 2012

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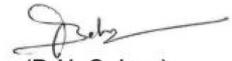
Government of India  
Ministry of Health & Family Welfare  
Maternal Health Division

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**Notification**  
**No. 12015/49/2008-MCH**

**New Delhi, the 29<sup>th</sup> of October, 2014**

Ministry of Health & Family Welfare, Government of India is proposing to bring amendments in some provisions of The Medical Termination of Pregnancy Act, 1971. A copy of the draft MTP (amendment) Bill is enclosed herewith to solicit the views/suggestions from the interested stakeholders and general public and the same may be sent through email on [saurabh.mittal89@nic.in](mailto:saurabh.mittal89@nic.in) on or before 10<sup>th</sup> November, 2014.



(D.N. Sahoo)

Under Secretary to the Govt. of India

	<b>THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) BILL, 2014</b>	
	A BILL	
	<i>further to amend the Medical Termination of Pregnancy Act, 1971.</i>	
	BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:-	
	1. (1) This Act may be called the Medical Termination of Pregnancy (Amendment) Act, 2014.	Short title and commencement.
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
34 of 1971.	2. In the Medical Termination of Pregnancy Act, 1971(hereinafter referred to as the principal Act), in the long title, for the words "by registered medical practitioners", the words "by registered health care providers" shall be substituted.	Amendment of long title.

	<p>3. In section 2 of the principal Act, for clause (d), the following clauses shall be substituted, namely:—</p> <p>‘(d) “registered health care provider” means –</p> <p>(I) a medical practitioner who possesses any recognised medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, whose name has been entered in a Indian Medical Register or State Medical Register; or</p> <p>(II) a practitioner who possesses—</p> <p>(i) any recognised medical qualification of Ayurveda, Unani or Siddha as defined in clause (h) of section 2 of the Indian Medicine Central Council Act, 1970, whose name has been entered in the Central Register or State Register of Indian medicine; or</p> <p>(ii) any recognised medical qualification of Homoeopathy as defined in clause (g) of section 2 of the Homoeopathy Central Council Act, 1973, whose name has been entered in the Central Register or State Register of Homoeopathy; or</p> <p>(III) a nurse or auxiliary nurse midwife who possesses any recognised qualification in general nursing or auxiliary nurse midwifery as defined in section 10 of the Indian Nursing Council Act, 1947 and who has been enrolled as a nurse or auxiliary nurse midwife in the Indian Nurses Register or the State Register;</p> <p>(e) “prescribed” means prescribed by rules made under this Act;</p> <p>(f) “termination of pregnancy” means a procedure to terminate a pregnancy by using medical or surgical methods.’</p> <p>4. In section 3 of the principal Act, -</p> <p>(i) for the words “registered medical practitioners”, wherever they occur, the words “registered health care providers” shall be substituted;</p> <p>(ii) for sub-section (2), the following sub-section shall be substituted, namely: –</p> <p>“(2) Subject to the provisions of sub-section (4), a</p>	<p>Amendment of section 2.</p> <p>102 of 1956</p> <p>48 of 1970</p> <p>59 of 1973</p> <p>48 of 1947</p> <p>Amendment of section 3.</p>
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	<p>pregnancy may be terminated by a registered health care provider,—</p> <p>(a) on request of a woman, where the length of the pregnancy does not exceed twelve weeks;</p> <p>(b) (i) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks; or (ii) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks and the woman falls in one of the categories, as may be prescribed,</p> <p>if such health care provider is of the opinion, formed in good faith, that –</p> <p>(A) 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</p> <p>(B) there is a substantial risk that if the child were born, it would suffer from serious physical or mental abnormalities;</p> <p><i>Explanation.</i>— For the purposes of this clause,—</p> <p>(i) 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;</p> <p>(ii) where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.</p> <p>(C) the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy shall not apply to the termination of a pregnancy by a registered health care provider where the termination of such pregnancy is necessitated by the diagnosis of any of the substantial foetal abnormalities as may be prescribed.”.</p>	
<p>Qualification, training, experience, etc of registered health care providers.</p>	<p>5. After section 3 of the principal Act, the following section shall be inserted, namely:—</p> <p>“3A. (1) For the purposes of clause (d) of section 2, the training, experience and the methods to be adopted by the registered health care providers who are qualified to terminate the pregnancy, shall be such, as may be prescribed.</p> <p>(2) For the purpose of sub-section (1), the place where the pregnancy may be terminated, the modalities of diagnosis, record keeping and other matters, in addition to the provisions of section 4, shall be such, as may be prescribed.”.</p>	<p>Insertion of new section 3A.</p>
<p>Substitution of</p>	<p>6. For section 5, the following sections shall be substituted,</p>	<p>Sections 3 and 4</p>

<p>section 5.</p>	<p>namely:—  “5. 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 a registered health care provider shall not apply to the termination of a pregnancy by a registered health care provider in case where he is of the opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”.</p>	<p>when not to apply.</p>
	<p>5A. No registered health care provider shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act.</p>	<p>Protection of privacy of a woman.</p>
<p>45 of 1860.</p>	<p>5B. (1) Notwithstanding anything contained in the Indian Penal Code, the termination of pregnancy by a person who is not a registered health care provider shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.</p>	<p>Offences and penalties.</p>
	<p>(2) Whoever terminates any pregnancy in a place other than a place 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.</p>	
	<p>(3) Any person being the 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.</p>	
	<p><i>Explanation.</i>— For the purposes of this sub-section, the expression “owner”, in relation to a place, means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.</p>	
	<p>(4) Whoever contravenes the provisions of section 9 shall be punishable with imprisonment which may extend to one year, or with fine, or with both.”.</p>	
<p>Amendment of section 6.</p>	<p>7. In section 6 of the principal Act, in sub-section (2),—  (i) in clause (a), for the words “registered medical practitioner”, the words “health care provider” shall be substituted;  (ii) after clause (a), the following clauses shall be inserted, namely:—  “(aa) the categories of woman under sub-clause (ii) of clause (b) of sub-section (2) of section 3;</p>	

	<p>(ab) the categories of registered health care providers who are qualified to terminate the pregnancy, the training and experience of such registered health care providers and the methods to be adopted by them in terminating the pregnancy under sub-section 3A;</p> <p>(ac) the place where the pregnancy may be terminated, keeping of records and other matters under sub-section (2) of section 3A;</p> <p>(ad) the categories of substantial foetal abnormalities under sub-section (2) of section 5.”.</p>	
Amendment of section 7.	<p><b>8.</b> In section 7 of the principal Act, in sub-section (1),-</p> <p>(i) in clause (a), for the words “the registered medical practitioner”, the words “the registered health care provider” shall be substituted;</p> <p>(ii) in clause (b), for the words “registered medical practitioner”, the words “registered health care provider” shall be substituted.</p>	
Amendment of section 8.	<p><b>9.</b> In section 8 of the principal Act, for the words “registered medical practitioner”, the words “registered health care provider” shall be substituted.</p>	

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