

**A REVIEW STUDY ON ETHICS AND LAWS RELATED TO
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ABSTRACT

Ethics laws and acts related to gynaecology and obstetrics include two important aspects Abortion and Adoption. Regarding abortion, being a legal matter as it comes to be a social issue of female feticide, government has made laws. There have been various amendments in these laws since 1960. Abortion is a highly charged controversial issue and hence needs to be controlled by legislation. Adoption also is a matter of social concern and it is also governed by various laws set by the government of India considering the religious versatility in India. These laws make adoption safer for the needed and help to avoid malpractices. Both Abortion and Adoption related laws should be known in context to Gynaecology and Obstetrics. This article includes a review of Ethics and Laws related to Abortion and Adoption.

KEYWORDS: Ethics, Laws, Abortion, Adoption.**INTRODUCTION**

Abortions, be it spontaneous or induced, are most common adverse outcome of pregnancy, yet its prevalence and underlying causes are subjected to continuing investigation and understanding.

Among issues related to reproductive health, none has more controversial connotations than abortion nor carries a heavier burden of stigmatization. Abortion, is a universal phenomenon and is defined as and has existed throughout recorded history, yet it continues to be a highly charged, controversial issue, raising extreme passions among lay people, as well as politicians, religious leaders, and health and rights advocates. Although abortion services in

India were liberalized more than three decades ago, access to safe services remains limited for majority of women. For this purpose Government has laid down certain laws related to abortion like the MTP Act, PCPNDT Act.

Adoption is also a matter of legal concern because child placed for adoption have no one to speak accept Adoption laws and procedure framed. Despite of a possible longer wait, approved legal way for adoption in India ultimately guarantees peace of mind.

This paper include a review of Ethics and Laws related to Abortion and Adoption.

Ethics and Laws related to Abortion

Induction of Abortion – Deliberate Termination of pregnancy either by medical or by surgical method before the viability of fetus is called abortion.^[1]

Induced abortion can be legal or illegal (unsafe).

Law before 1971 –

The Indian Penal Code, enacted in 1860 and written in accordance with contemporaneous British law declared induced abortion illegal.

Induced abortion was defined as purposely causing miscarriage.

Penalty (Section 312 – 316)

- 1) Abortion Practitioners - 3 years prison / Fine / Both.
- 2) Woman available for abortion - 7 years prison / Fine / Both.

The only exception was when the abortion was induced in order to save the life of the woman.^[2,3]

The liberalisation of abortion law in India began in 1964 in the context of high maternal mortality due to unsafe abortion. Doctors frequently came across gravely ill or dying women who had taken recourse to unsafe abortions carried out by unskilled practitioners. They realized that the majority of women seeking abortions were married and under no socio-cultural pressure to conceal their pregnancies and that decriminalizing abortion would encourage women to seek abortion services in legal and safe settings.^[4] Hence,

- 1) Prevalence of illegal abortions
- 2) The idea that abortions could be a mode of population control caused the government to reconsider the law.

In 1964 the Central Family Planning Board of Government of India Formed a committee to examine the subject of abortion from

- Medical
- Legal
- Social
- Moral standpoints

Their study suggested that Penal Code was too restrictive.

They recommended that the exemptions under which Abortion was permissible be increased and liberalized.

1971 & Beyond

In India Abortion Laws fall under the Medical Termination Of Pregnancy Act.^[5]

It was enacted by the Indian parliament in the year 1971 with intention of

- 1) Reducing incidence of Illegal Abortion
- 2) Consequent Maternal Mortality & Morbidity.

The MTP Act came into effect from 1st April 1972 and was amended in years 1975 – 2002.

Since legislation of Abortion in India, deliberate induction of abortion by a registered medical practioner in interest of mother health & life is protected under MTP Act.

Provisions under MTP Act

- 1) The continuation of pregnancy would involve serious risk of life or grave injury to the physical and mental health of pregnant woman.
- 2) There is substantial risk of the child being born with serious physical and mental abnormalities so as to be handicapped in life.
- 3) When pregnancy is caused by rape, both in cases of major and minor girl and in mentally imbalanced woman.
- 4) Pregnancy caused as a result of failure of a contraceptive.

Indications

- 1) To save the life of mother –
 - Cardiac Diseases (Grade 3 & 4) with history of decompensation in previous pregnancy or in between pregnancies.

- Chronic Glomerulonephritis
 - Malignant Hypertension
 - Intractable hyperemesis gravidarum
 - Cervical and breast malignancy
 - Diabetes mellitus and Retinopathy
 - Epilepsy or Psychiatric illness.
- 2) Social indications –
- Parous women having unplanned pregnancies with low socio economic status
 - Pregnancy caused by rape
 - Unwanted pregnancy caused due to failure of any contraceptive device.
- 3) Eugenic – This is done under the second provision and the indications are
- Structural – Anencephaly
Chromosomal – Down's Syndrome
Genetic – Hemophilia
 - When the fetus is likely to be deformed due to action of teratogenic drugs like Warfarin / Radiation exposure >10 rads in early pregnancy.
 - Rubella – A Viral infection in first trimester

Recommendations^[6]

- 1) In revised rules, A Registered Medical Practitioner is qualified to perform an MTP provided
 - a) One has assisted in at least 25 MTP in an authorized center and having a certificate
 - b) One has got 6 months house surgeon training in obstetrics and gynaecology
 - c) One has got diploma or degree in obstetrics and gynaecology.
- 2) Termination can be performed in hospitals established and maintained by government or places approved by the government.
- 3) Pregnancy can be terminated only on written consent of woman
- 4) Pregnancy in minor girl below 18 years or lunatic cannot be terminated without legal consent of parents or legal guardian
- 5) Termination is permitted upto 20 weeks of pregnancy
 - Till 12 weeks – 1 medical practitioner
 - Exceeds 12 weeks – 2 medical practitioners

- 6) The abortion has to be performed confidentially and to be reported to the director of health services of the state in the prescribed form.

Sex Selective Abortion

Prenatal diagnostic techniques like medical ultrasonography are capable of determining sex of the fetus.

In parts of India daughters are not preferred and hence sex selective abortion is commonly practiced.

The act PC & PNDT is enforced to prohibit sex selection before or after conception to prevent the miss use that leads to female feticide.^[7]

THE PRECONCEPTIONAL AND PRENATAL DIAGNOSTIC TECHNIQUES 1994^[7,8]

Amended up to Feb 2003

It covers the regulation of

- 1) Genetic counselling centers
- 2) Genetic Laboratories
- 3) Genetic Clinics

The act permits such procedures to detect any of the following abnormalities –

- Chromosomal abnormalities
- Haemoglobinopathies
- Sex linked genetic diseases
- Genetic metabolic diseases
- Congenital anomalies
- Any other abnormalities / diseases as may be specified by central supervisory board.

The person qualified to do the procedure must be satisfied for reasons to fulfill the following conditiond in writing –

- 1) Age of pregnant woman more than 35 years
- 2) Pregnant woman has undergone 2 or more spontaneous abortions / fetal loss
- 3) Pregnant woman exposed to potentially teratogenic agents like drugs, radiations, infections, chemicals

- 4) Pregnant woman / spouse has family history of mental retardation / physical deformities / any other genetic disease.

Written consent of pregnant woman is obtained and there is prohibition of communicating sex of the fetus.

According to the act the following are Cognizable, Non Bail able, Non Compoundable Offences

- 1) Conducting or associating or helping to conduct pre-natal diagnostic tests for determining the sex of the fetus
- 2) Sex selection as a woman or a man or both, on any tissue, embryo, conceptus fluid or gametes derived from either or both of them.
- 3) Advertisement / Communication in the form of print, electronic media or interned by medical professionals or companies on the availability of sex determination and sex selection in the form of medicines or any kind of techniques.

PUNISHMENT

	Attempt	Fine	Imprisonment
Provider	1st	10,000	3 years
	2nd	50,000	5 years
Those who seek the aid	1st	50,000	3 years
	2nd	1,00,000	5 years

ADOPTION

Children placed for adoption have no one to speak except adoption laws and procedure framed.

Despite of a possible longer wait, approved legal path for adoption in India ultimately guarantees peace of mind.

HINDU ADOPTION AND MAINTAINANCE ACT – 1956

Part of Hindu Court Bills^[9]

It extends the whole India except the state of Jammu & Kashmir.

Applications of act

- 1) To any person who is Hindu by religion in any of its forms or developments, including virashaiva, a lingayat or follower of the Bramha Prarthana or the Arya samaj.

- 2) To any person who is a Buddhist, Jain or Sikh by religion.

Requisites of a valid adoption – No adoption should be valid unless

- 1) The person adopting has the capacity and the right to take in adoption.
- 2) The person giving in adoption has the capacity to do so.
- 3) The person adopted is capable of being taken in adoption.
- 4) The adoption is made in compliance with the other conditions needed for adoption.

• **Capacity of a Male Hindu to take in adoption**

Any male Hindu who is of sound mind and is not minor has the capacity to take a son or a daughter in adoption.

Provided that he has a wife living, he shall not adopt except with the consent of the wife unless the wife has completely and finally renounced the competent jurisdiction to be of unsound mind.

• **Capacity of a female Hindu to take in adoption**

Any female Hindu who is of sound mind and is not a minor, to take a son or a daughter in adoption.

Provided that if she has a husband living, she shall not adopt a son or a daughter except with the consent of her husband or unless the husband has completely and finally renounced the world or has ceases to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

✓ **WHO CAN ADOPT?**

- 1) Adopter has the legal right to adopt under this act i.e he is Hindu.
- 2) Has the capacity to provide for the adopted
- 3) Man can adopt only with the consent of his wife
- 4) Unmarried men can adopt only if not minor. If man has to adopt a daughter has to be above 21 years
- 5) If the man has more than one wives then elder one is considered as the legal mother.

✓ **WHO CAN BE ADOPTED?**

- 1) Must be Hindu male or female

- 2) Adoptee needs to be unmarried, however the particular custom or usage is applicable to the involved parties, then the adoptee can be married.
- 3) Child cannot be age of 15 or more
- 4) Adoption can only occur if there is not a child of same sex of the adopted child still residing in home.

- **Legal Implications For An Adopted child**

- 1) From the date of adoption the child is under legal guardianship of new parents and thus should enjoy all benefits (property, inheritance etc.)
- 2) Which means child is cut from legal benefits from family who had given him or her for adoption.

Guardians And Wards Act – 1890^[10]

Minor- Means a person who, under the provisions of Indian Majority Act 1875 is to be deemed not to have attained his majority.

Guardian – Means minor for whose person or property there is a guardian.

Under the Guardian and Wards Act 1890 people belonging to communities such as **Muslim, Christian, Parsi or Jews** and who wish to adopt can only take guardianship of the child. This child like the biological child would not be provided with the same status.

Christian & Parsi's can take a child under the said act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides such a child does not have the right of legal inheritance.

Foreigner's, who want to adopt Indian child have to approach the court under the foresaid act.

In case the court has given permission for the child to be taken out of the country, adoption according to foreign law, that is law applicable to guardian takes place outside the country.

➤ Eligibility Criteria According To

CENTRAL ADOPTION RESOURCE AUTHORITY (CARA)^[11]

Parents should be **Physically, Mentally & Emotionally stable, Financially capable and shall not have any life threatening condition.**

Central Adoption Resource Authority (CARA) is a statutory body of Ministry of Women & Child Development, Government of India. It functions as the nodal body for adoption of

Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993. It was ratified by government of India in 2003.

CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated /recognized adoption agencies.

CONCLUSION

The article includes a review of the Ethics And Laws Related to Obstetrics And Gynaecology mainly including Abortion And Adoption.

Several amendments have been made by the government throughout the years considering various aspects and still though require certain changes and improvisation accordingly. These laws help to create transparency and govern the important aspects related to Abortion and Adoption.

Both being a social issue and responsibility these laws should be in knowledge of medical professionals as well as the society.

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