

**CHOICE OF A WOMAN UNDER MEDICAL  
TERMINATION OF PREGNANCY (MTP) LAWS  
TOGETHER WITH PRE NATAL DIAGNOSTIC  
TECHNIQUES (PNDT): A CRITICAL STUDY**

Thesis submitted for the award of the Degree of

**DOCTOR OF PHILOSOPHY  
IN LAW  
BY**

**PYALI CHATTERJEE**

Under the supervision of

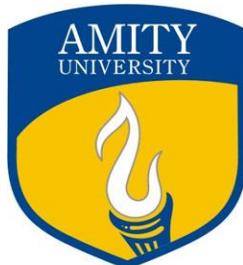
**DR. KOMAL VIG (Guide)**

ASSOCIATE PROFESSOR, AMITY LAW SCHOOL, NOIDA

AND

**DR. SUSMITHA P MALLAYA (Co-guide)**

ASSISTANT PROFESSOR, FACULTY OF LAW, DELHI  
UNIVERSITY



AMITY LAW SCHOOL, NOIDA  
AMITY UNIVERSITY UTTAR PRADESH  
INDIA  
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**CHAPTER-7**

**CONCLUSION AND SUGGESTIONS**

## **CHAPTER-7**

### **CONCLUSION AND SUGGESTIONS**

#### **7.1. SUMMARY –STRATEGIES AND SHORTCOMINGS**

Throughout the study, it was found that actually there is no such choice given to Indian Women regarding, Abortion Rights or Reproductive control. Women in US had the choice because for achieving this choice they struggle hard for getting abortion right as their basic right under Right to Privacy. On the other hand, Abortion right in India was not introduced by any feminist movement but it was introduced upon the recommendation of a committee i.e. Shantilal Shah Committee. Thus, the abortion rights provided to Indian Females are limited and it was introduced as a family plan. Regarding Reproductive rights, the position of Indian women is not good yet. Current situation of Indian women is similar to that situation of the US women of Second wave feminism i.e. the period between nineteenth and early twentieth century when they were not having the abortion right as birth control. From this, we can guess that how much we are lacking behind. Even in today's era where we speak about equality before the law but still termination of pregnancy on insist is not granted to females. Though, we had good numbers of Law relating to it.

Reproductive Choice and Reproductive rights both these two terms are different but actually these two are interrelated to each other. As without reproductive rights, reproductive choice is not possible or vice versa. In terms of science, we can say that, Reproductive Right is the GENUS and Reproductive Choice is the SPECIES, so without Reproductive Right there is no Reproductive Choice. Researcher in her finding found that in India even though in books one can find the law relating to Reproductive Rights but in practical situation, researcher found that there is actually no such rights exist. That is the reason, MMR is not controlled yet. Even abortion service in Government Hospital is not provided to the needy women, thus forcing them to choose private clinics for abortion service after paying huge amount and in case if they are financially not sound then they were forced to carry the unwanted pregnancy.

The entire discussion in the thesis is based on five research questions. Each research question has its own importance and finding.

## **7.2. RESEARCH QUESTION NUMBER -1:**

### **WHETHER THE MTP ACT WAS INTRODUCED TO CONTROL THE BIRTH RATE?**

To know the answer of this question first we must know about the historical perspectives of abortion law. It was Margaret Sanger in US, who started the feminist movement for Abortion Rights for all women irrespective color, caste, and race. It was her effort that today all women in the US were enjoying this right.

Reproductive rights consist of two parts as per the definition given in International Instruments -

1. Number of Children: Freedom to decide the number of children
2. Right to be informed and services with respect to manage one's family, i.e. Family planning.

The above mentioned points are interdependent to each other. These points are considered to be as undividable. Procreative right is a basic fundamental right for every woman and obliged to be unconditional because no-one else but the woman goes through all of it. It is the body of a woman where the fetus grows hence it should be the sole discretion of a woman to decide to beget the child or to annul the pregnancy. Women should have access to abortion service in the ambit of the Procreative Rights above all.

But women in India don't have this right as a whole. Though Abortion right which has been considered to be as one of the vital right of the females, but Indian Government somewhere failed to provide this right. And the reason for this is was that there was no feminist movement on it. Abortion right in India was introduced in Five Year family plan method and that too it was enacted upon the reference of the Shantilal Shah committee for tackling the populace growth.

International Community recognized Abortion right as one of fundamental and elementary right of females, and no institution should intervene with abortion right given to women and also it was instructed not to use abortion for birth control program. “Sec. 3, Explanation-2 of, MTP Act” clearly speaks about abortion rights in cases of failure of any Family Planning methods which shows the use of abortion services for population control.

Another important point to be mentioned here is that “Hindu Widow Remarriage Act, 1856” was enacted for the betterment of the widow, so that they can remarry after the death of her husband. But in many cases it has been found that whenever a widow is found to be pregnant and if she wanted to terminate the pregnancy for her better life in future then what is the need of the Hindu Widow Remarriage Act, 1856, as current abortion law prevents her from doing abortion because widows are not allowed under MTP for abortion. Here I can say that MTP Act and Hindu Widow Remarriage Act, 1856 in it are disputable in nature as it creates hurdle for the widow to remarry. In such situation what is the need of this Act if the widow have to face problems. Even the problem of divorce lady is same like the widow. Restriction on Abortion rights will force these ladies to opt the unsafe and illicit methods of abortion practice.

Current MTP Act had provided limited abortion rights to woman and that's too under stringent conditions. Also medical practitioner opinion is must for getting the facility of abortion services in any cases. Most of us may think that Indian women are facing this problem because of patriarchal society. Then in that case I must say it's a wrong thinking because when Margaret Sanger started the Feminist movement in US for abortion rights, during that period society was male dominating. But it was the movement imitated by all women for their Reproductive rights, respect for autonomy; it's their body so decision should also be her only to bring or not to bring a new life. Prior to feminist movement in US, only the medical practitioners were allowed to determine and terminate the pregnancy. It was subsequent to feminist movement, women in US achieved their right to terminate pregnancy as an elementary right.

Prior to MTP Act and even after its enactment therapeutic abortion was allowed to Indian women and that to under certain conditions. The only change which has been made by the MTP Act is that abortion was allowed in minor pregnancy,

ravish victim and eugenic reasons. In India, terminate of pregnancy is not permitted on insist. Actually women womb is controlled by the GOI for the purpose of population control and to maintain the NRR of 1 as already discussed in chapter 6. Here women were brought up to perform the domiciliary work, to marry and to beget children. No choice, no freedom for their body is given to them. On the other hand the picture of US was also not so different from India as US also being a patriarchal society as the pope, pastor in house of worship were male and for them termination of pregnancy is a crime. For industrialist allowing the right to terminate pregnancy to the black women will decrease their population of the slaves by which their business will effect, as for them more production will be possible only when more slaves will be available. The head of this capitalist/industrialist was also a male. Women in US really had a tough fight against the male dominating society for achieving right to abortion on insist. But still in 21<sup>st</sup> century women in India were not allowed for abortion on insist. In the most elevated strata of the humankind a male is always found till now but this doesn't mean that we cannot confront for our reproductive rights which should include abortion on insist. As it's the woman who can conceive, so the decision should solely depend upon the woman regarding pregnancy.

The true meaning of Right to Equality in the 21st century can be achieved only when women will have the right to have entitlement on their womb. Even for the purpose of population control Indian Government should allowed abortion on insists for all unwanted pregnancy which is already discussed in chapter 6. Family Planning program will be achieved only when we can make changes in current MTP laws whereby allowing every woman to right to abortion on insist. By this only Government will be to tackle the problem of Population up to some extent. There is an urgent need of feminist movement in India for bringing changes in current abortion law.

The present MTP Act, 1971 is an example of breach of reproductive rights which is considered to be as one of the essential fundamental rights of the woman because no-one but the woman is the one bearing the child for 9 month &not society. Even under the Reproductive politics the identity of Indian women become dormant, & to make it active strong feminist movement is needed here like in western countries.

Researcher strongly feels that mass feminist movement is essential to make the abortion right available on insist to all women without any discrimination. Chapter 2 and 3 of this thesis deals with this question.

*So from the above discussion it is proof that termination pregnancy in India is not introduced as prerogatives for female but it is introduced as family planning methods.*

### **7.3. RESEARCH QUESTION NUMBER-2:**

#### **WHETHER MTP ACT IS CONTRARY TO ARTICLE 14 AND 21 OF INDIAN CONSTITUTION?**

Sec.3 of MPT clearly states that, who can terminate pregnancy. Earlier no woman was permitted to annul her gestation except under therapeutic ground. But now after the MTP Act only wedded, minor & victims of coerced sexual intercourse can opt this facility. But this Act does not speak about the entitlement of women who are not married, widowed or divorced.

Moreover, the Act never provided right to abort on insist, a women can terminate her pregnancy only when the doctor will permit, also the women has to give explanation for terminating her pregnancy as per “Explanation 2 of Sec. 3 of the Act”. Thus, in M.T.P, Act there is a loophole in its which give space for illicit abortion to women who are unmarried, widow, divorcee, because either they have to show they are married or ravish victim for legal abortion & also they have to proved in case of married that gestation occurred because the contraceptive failed to work. In all circumstances it become impossible for the unmarried, widow and divorced ladies for opting legal abortion. So in any case the only way which is left for these ladies is to choose illicit and unsafe abortion.

Even after MTP Act, the maternal mortality rate is not controlled rather it has increased. This is another evident to proof that MTP Act is not effective to control the MMR.

There is a conflict between MTP Act, 1971 & Matrimonial law relating to married women abortion right, as women got an absolute freedom and discretion under MTP law to determine whether to bear the child in the womb or not. So, when married women conceive & such pregnancy is unwanted then in that case she can

terminate her pregnancy voluntarily under MTP Laws. But according to matrimonial law, a married woman cannot terminate her pregnancy according to her will as it will amount to cruelty in matrimonial suit and its ground of divorce also. Then, in such a case what is the validity of the “Sec. 3(4) (a) of MTP Act”.

As married ladies has to take her husband consent before termination her pregnancy under matrimonial laws, this proof that even though in India we had abortion law but this law is very much restricted in nature. As, sometimes women have to wait for the doctor's opinion to terminate her pregnancy and under matrimonial law she has to take consent from her husband to terminate her pregnancy. In both the cases women's right to terminate her pregnancy is dependent on the doctor's opinion, husband consent & off course lastly it's the government. Thus, MTP Act is coercive in nature. The right which is given to Indian women under MTP Act, 1971 is a conditional Right, i.e. when conditions given “u/s. 3 of MTP Act, 1971” is fulfilled then only annulment of pregnancy is allowed & not in other situations.

Previously we have already noted that laws related to termination of pregnancy was not enacted in India as a woman reproductive entitlement rather it was introduced as a way for family planning, also the conditions which is mentioned in “Sec. 3 of MTP Act”, provides discretion to the doctor to decide whether to do abortion or not. Even if the women want to go for abortion, she was to wait for the permission of the doctor for M.T.P. Earlier Law relating to abortion was totally restrictive except in cases of therapeutic, abortion was allowed, and now after MTP laws even though many grounds was included u/s. 3 of MTP Act, but still women are unable to opt this facility as it is restrictive in the hand of the doctors who has the sole discretion or power to decide whether to perform MTP or not.

The MTP law in India does not give any reproductive choices to women. Whether it's Tubectomy, vasectomy, abortion and other ways of birth control, in the eye of the government all this methods can be used to control the population and only married lady can avail this.

In Indian scenario, abortion which is generally considered as a right over one's own body holds no place here. Most of the Government funded schemes in India support abortion as a way of population control mechanism.

Right to privacy under Fundamental rights contains various other features in it. One of the aspects is right to abortion. But the dilemma of this entitlement is that this right is restricted to only wedded women, minor and ravishes victims. Indian Law has failed to define the circumstances and situations which may create psychological stress to the women if forced to bear the child in the womb.

Supreme Court in **Suchitra Srivastava versus Chandigarh Administration** already explained that Article 21 comprises the entitlement to have procreative rights to bear the child or to annul the pregnancy under personal liberty. But still today numerous unmarried, widow, divorcee women were coerced to bear the child in their womb or to choose to terminate the pregnancy through illicit means by risking their health. Ultimately there is no choice to women except following law of the land.

*There exists a clear contravention of Right to Equality under Article 14 as MTP Laws makes distinction between married ladies with unmarried ladies. Not only this, making such distinction between them will amounts to infringement of Right to Privacy under Article 21 of Indian Constitution too. Chapter -4 of this thesis dealt with those entire situations when it will amount to breach of “Article 14 and 21 of the Indian Constitution” in detail.*

#### **7.4. RESEARCH QUESTION -3:**

#### **WHETHER PNDT ACT CAN BE USED TO CONTROL BIRTH RATE BY SELECTIVE METHODS?**

Chapter-5 of this thesis basically deals with this Research question. The following are the points which is highlighted in this chapter-

- PNDT Act, 1991 was introduced by Government and judiciary for the protection of female child from female feticide. This act is silent regarding the right of a woman for male Feticide.
- Law failed to understand the anguish of the women for carrying the unwanted child.
- Banning PNDT will not help in the control of the population of India; India holds Second position in world for population growth.

- For maintaining balanced and small family size PNDT is necessary.
- Family seeks PNDT during their 2nd or 3rd pregnancy for the want of opposite sex.
- Allowing PNDT will not only help in the control of population growth but it can save the life of many women from the mental and physical abuse from the husband's family , sometimes resulting in death of the women for giving birth to number of girl child.
- Both PNDT and MTP Act together can help in the control of the population.
- Though both the Act is different in terms of objects and reasons but they are interlinked to each other. As both can play an important role for controlling the population.
- Couples should be allowed to use PNDT for the purpose of having balanced family. This will also help them to maintain a balanced small size. For this, balanced family concept should be introduced in India and one should not get confused with sex selective abortion for female feticide.
- Another important point is that the motive behind the 5 year family plan is to control the population cannot be achieved only with the help of the MTP Act. It can be achieved when both MTP and PNDT Act will be allowed.
- PNDT for Female feticide and Balancing Family, both these are different in nature and should not confuse it. If someone is against female child then that is wrong but when a family wants a balanced family or small family then that is not wrong. As they want child of both sex which is neither wrong nor it's a crime.
- For two child norm policies, all women should get the right for abortion under MTP irrespective of their marital status and only married women should be allowed for PNDT during her 2<sup>nd</sup> or 3<sup>rd</sup> pregnancy for the control of population.

- PCPNDT is not the problem behind female feticide. It's the mentality of the patriarchal society which thinks boys are necessary for the growth of family. But they failed to understand the truth that seed alone cannot grow into a tree. For its growth into tree, soil is necessary for its nourishment. Same goes for humans. For the growth of family women is also necessary.

Researcher from her observation found that PNDT Act or PCPNDT Act was introduced with a goal to control female feticide. But no changes have been seen in past and present in terms of CSR. Also Government and judiciary failed to understand the importance of selective abortion for having small and balanced family. Ethically, morally and legally it's not good to force a woman to carry her pregnancy up to the term for knowing the sex of child, also by doing this Government is indirectly increasing the crime of female infanticide as well as crime against women. Coercive action of Government can't give any positive result but it may increase the problem of unwanted child, infanticide, women abuse and in tremendous case death of the women for giving birth to number of girl child. For getting one positive result i.e. balanced Child sex ratio, government is doing injustice to many women. More or less it's only the women who are the victims of coercive action of the Government as well as of Indian Law. None of them are concerned about the choice of women and also no respect for the women autonomy. Female Feticide is a crime against entire race of women. But not in a case when a family, only for achieving the balanced family which includes both male and female want to abort the female child since they already had a female child. Want of opposite sex child is not a crime nor wrong, rather is it a right of the individual to have a balanced family which is essential to manage of the population as well. Rather focusing on Female Feticide one should focus on Population Control by maintaining balanced family. Also by knowing the importance of balanced family may be the problem of Female feticide will controlled and the status of women will also improved. Every woman deserves respect for her autonomy and their role is not limited to produce and rear the baby of the choice of the society.

*So the answer of the above research question is “Yes”. If PCPNDT Act is carefully monitored and used then it can help in controlling the population of India by maintaining small balanced family.*

## **7.5. RESEARCH QUESTION-4:**

### **WHETHER SELECTIVE ABORTION SHOULD BE ALLOWED?**

As we have already seen in Chapter 6 of the thesis that both MTP and PNDT Act is interrelated to each other though the objective of the Acts are different. These two Acts is related to Five Year Family Planning Program in terms of Population Control. Though, PNDT Act was introduced to prevent killing of girl child.

The preamble in PNDT Act starts with “An Act to provide for the prohibition of Sex selection, before and after conception, and for regulation of prenatal diagnostic Techniques for the purposes of detecting genetic abnormalities or certain congenital malformations or sex linked disorders and for the prevention of their misuse for sex determination leading to female feticide and for matters connected therewith or incidents there to”. Means to stop the female feticide sex selection will not be allowed. But when we talked about the small family size and NRR of 1 then in such case without selective abortion how it is possible to maintain and achieved the target of NRR to be 1. It is not necessary that the sex selection will always be done with an intention of female feticide. If someone already had a male child, then may be for Second time the couple will like to have a female child for making the family complete or perfect we can say. A small size family can be maintained only when it is planned. A planned family will be achieved only when abortion rights followed with sex selection will be allowed. Whenever we speak about the family plan and population control the entire focus shifted upon women to control her fertility. But no one is bother about the health of the woman when she is forced by the Government to continue with the pregnancy like unmarried lady were not allowed for abortion under MTP Act, and on the other hand due to social pressure she is forced to produce many children for the fancy of male child.

One thing which I can't understand is that in a society both male and female children are needed and both of them had different role in the society. It's a universal truth that a man can't give birth to a child and a woman cannot conceive alone without a man. So, both male and female is needed for the growth of the society. There is no doubt that Selective abortion is morally wrong and unethical. Even I also believed it to be wrong. But, not in a case, when a family want to check the sex of

fetus during Second pregnancy. Want of opposite sex child is not wrong. It will be wrong, when in the first pregnancy the woman/family members want to do selective abortion for not wanting a baby of particular sex. It's a normal wish of every family to have both boy and girl. If someone already had a boy or girl then what is wrong to have the opposite baby during Second pregnancy. Also the preamble of the PNDT Act speaks about female feticide. So, in that case if a family already had a son as first child and now not in favor to have a male child in that situation sex selection should be allowed. All family had right to plan their family according to their wish. Also planned family will not only help in the control of the population but it will also help in growth of economy and also for the development at social strata in the society. If married couples were allowed to choose and planned a family then the target of the government will be achieved to control the birth rate as well as the position of the woman will also improved in the society. Forcing woman to continue her pregnancy and giving birth to an unwanted child is not going to help to control population, in same way banning sex selective abortion will not help to control the selective abortion for female feticide. Rather banning has increased other problems in the life of the women as already discussed earlier. So, it's better to allow women for abortion rights and married couples for selective abortion through mutual consent.

As we know that for India, controlling populace was the major goal due to which the five year family plan was introduced. Government came up with Abortion law with a goal to control population but that was limited to married women only. Now a day's most of the families are it from the villages or the families dwelling in cities desire a nuclear family due to the awareness of problems relating to population growth. Maintaining small family will be possible only if termination of pregnancy is permitted on couple's desire. For limiting family size abortion right should be allowed to prevent the unwanted pregnancy. That is possible only when government will give respect to women autonomy by allowing every woman to right to abortion, at the end it's her life, mental and physical health which gets affected from unwanted pregnancy. The ideal family size will be possible only if selective termination of pregnancy will be permitted for maintaining the balanced family. Balanced small family refers to a family bearing at least one male and one female child.

Researcher has found that both MTP Act and PNDT Act are conflict in nature. MTP Act says that abortion is necessary for the control of population but that right is restricted to wedded women only. Again for maintaining small balanced family PNDT Act is important but that is banned due to female feticide. One Act is of the idea that termination of pregnancy is important to control population in cases of contraceptives failure. On the other hand PNDT Act curtails this right by banning the sex selective abortion which is necessary for maintaining the small balanced family. Government policy to manage NRR of 1 in 6<sup>th</sup> family plan will be achieved, but only if selective termination of pregnancy is permitted to married couples.

Reproductive Choice is one of the basic rights of women, as women reproductive autonomy too deserves respect from the others. It's the government's responsibility to protect and provide this right to women. Also in the 21st century still women were unable to enjoy their birthright that is a shame for the country as equal entitlement plus protection before law is possible only when women will be free to decide when and to whom she wants to give birth.

So for this research question the answer is "YES". As we all are concerned about the Population problem. If by using science and technology we can plan our family according to our choice, then indirectly it will help in maintaining the small and balanced family. There is no wrong in allowing selective abortion under strict supervision.

#### **7.6. RESEARCH QUESTION-5:**

#### **WHETHER AN EXCLUSIVE RIGHT SHOULD BE PROVIDED TO WOMEN TO DECIDE TO KEEP FEOTUS THE PREGNANCY OR TO ABORT?**

"Listen to the pregnant woman. Value her. She values the life growing inside her. Listen to the pregnant woman, and you cannot help but defend her right to abortion.<sup>1</sup> -----Ayelet Waldman

Most of the people considered the entitlement to bear power over one's body as their moral right and if this right is not allowed then women will be deprived of

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<sup>1</sup> M.L Brown, "*Jezebel's War with America : Plot to destroy our country and what we can do to turn the tide*", Frontline, 70-71, 2019

their right to abortion for an unwanted fetus. Argument in support of abortion-

- a) a lady must have the privilege to choose what she should or shouldn't do with her body
- b) it's the woman's womb which carries the fetus inside her
- c) so the decision must be taken by the women only to carry the fetus
- d) Thus it should be the prerogative of the female if she wants to bear the child or to abort it.
- e) Every person must have the right over their body.

In Roe versus Wade case, the US Supreme Court has given their opinion in support of women that the entitlement should be provided to the female to take the decision whether to terminate the pregnancy or not. Even women right for abortion is considered to be as autonomy of own choice in family matters and it protected under 14<sup>th</sup> amendment of US Constitution. Banning of abortion will forced women to continue with the unwanted pregnancy and it will violates her freedom of choice.

It's the women who get pregnant, so decision regarding her pregnancy should be taken by her. Even it will help in the formation of gender equality in the society. Political, Social, Economic equality will be achieved only when women will have right to abortion. Women should also have the same freedom like that of men and that is possible only when right to abortion is allowed to women. Denial of abortion right to women means denial of moral status of women in compare to men.

If women were denied for Abortion Right then in that case she will choose some unsafe methods for abortion which may be dangerous to her life also. Not only this, it will be a failure on the part of administration for not protecting her life.

Even in many research it has been found that unintended pregnancy had a very negative impact in women health during and after the unintended pregnancy. In several other studies it has been found that unintended pregnancy is considered to be as one of the fundamental risk elements associated with the growth of depression during pregnancy and postnatal. Ladies who state their pregnancy is unwanted during pre-birth checkups are more prone to develop symptoms of anxiety or may have high

stress level. In unwanted pregnancy women are five times more prone to depression than that of a woman with wanted pregnancies. In one of the studies conducted in the 1960s on 1113 women in the US, it was found that women who gave birth to an unwanted child from an unwanted pregnancy found to be more depressed and less happy. Whenever women is coerced to bear the unintended pregnancy for any reason to term the risk of developing self destructive behavior in future increases by three times which includes suicidal tendencies. It is also found that when abortion was denied due to any reason the risk increases by two fold. First trimester abortion for an unwanted pregnancy does not cause any mental health issue as such in terms of continuation of forced pregnancy.

So it is clear from the aforementioned that Abortion right for women is really important for their moral status as well as for their health too. Abortion can be really helpful to get relieve from the stress linked with unintended pregnancy.

In such situation researcher can say that it should be the women right only (when women is single) to decide to continue or not to continue her pregnancy especially when it is unwanted. It's she who will bring a new life into this world. So, for this she must be healthy from all side. Healthy mother can give birth to a health child. So for the benefit of the society women should not be forced to carry unwanted pregnancy. But for the cases of married lady, researcher would like to state here that India is a patriarchal society and marriage is considered here as a religious social institution. So, any decision related to pregnancy should be taken by both couples mutually. Pressuring anyone to conceive or not to conceive vice versa shall result in mental brutality and will be a reason for annulment of marriage. Regarding consent provided under MTP Act, it's clearly states that husband consent is not necessary for abortion and in matrimonial suit it's become ground for divorce if a woman goes for abortion without taking husband consent as researcher has mentioned several case laws in chapter 4 relating to it. In such situation researcher will like to say only one thing that except married woman, all ladies must be given the privilege to decide whether to carry on with the pregnancy or to terminate it. For married couples consent of both couples should be considered.

Chapter 6 already discussed about the agony due to the undesirable gestation in women, it becomes important to mention here that whether its abortion or sex selective abortion the sole decision maker should be the women only in case if she is single, as it's her womb, her health so no one should interfere in it and for married both husband and wife consent should be considered.

## **7.7. TESTING OF HYPOTHESIS**

After analyzing the research questions and concluding them, the hypothesis was tested.

### **1. Hypothesis I: Ban on selective abortion under PNNDT Act increases population.**

Both 5- Year Family Planning, MTP Act and PCPNDT Act are interconnected with each other when question comes relating to population control and restriction on any one of it will automatically effect the other one. Abortion right under MTP Act for married women will not be that much effective in terms of population control. Rather it should be allowed as a right for every woman regardless of her marital status and PCPNDT should be allowed as a family planning method & that also only for married couples. Averting the nativity of a single undesirable child with the help of PCPNDT Act will help in the control of the population. Banning sex selective abortion neither affected health of woman positively nor affected the nation's population. As for the want of a child of a particular sex women were coerced to produce many children indirectly increasing population. Country's growing population is an evidence of it. Thus hypothesis one is proved.

### **2. Hypothesis II: Termination of pregnancy is not women's basic right given under article 21 of Indian Constitution.**

The MTP Act allows only married lady for right to terminate pregnancy provided u/s. 3. This Act is quiet regarding the rights for unmarried, widow and divorce ladies. In fact the MTP Act failed to give the abortion right on insist to the women which again violation of Reproductive Right in the constitution provided under Article 21. MTP Act allows abortion to married ladies only on the ground of contraceptive failure which is again a contravention of Right to Privacy of Indian

Constitution provided under Article 21. Though Right to abort is taken into consideration under the Constitution in Article 21 as a fundamental Right for females served under Right to Privacy but it fails in providing this right to all women of this country. Thus the Second Hypothesis is partially proved.

## **7.8. SUGGESTIONS: NEED FOR WORKABLE LAWS**

This sub clause shall be dealt into two contentions. First part will be dealt with suggestive amendments in MTP Act and PCPNDT Act. Second part will deals with overall suggestions.

### **❖ Suggestive amendment for current MTP Act**

- A. The term “married women” should be replaced with “married and other women” provided in the MTP Act u/s. 3.
- B. Mandating the personal information of a woman undergoing abortion to remain undisclosed.
- C. Abortion on insist should be allowed for first 12 weeks.
- D. Increasing the gestational limitation up to 24 weeks.
- E. A clause defining “unwanted pregnancy” should be added in M.T.P. As currently in MTP no explanation is given regarding the situation when it will amount to unwanted pregnancy.
- F. “Mental anguish caused by such unwanted pregnancy” presented in “Sec. 3, of MTP act needs a wide definition.”

### **❖ Suggestive amendment for current PCPNDT Act**

1. PCPNDT Act should provide definition for Pre-conception Techniques.
2. Form F of “Sec. 9(8) of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Rules, 1996” must be simplified and briefed with respect to language.

3. Sec. 9(8) of “Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (PCPNDT) Rules, 1996” provides “Every Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic, Ultrasound Clinic and Imaging Centers shall send a complete report in respect of all pre-conception or pregnancy related procedures/ techniques/tests conducted by them in respect of each month by 5th day of the following month to the concerned Appropriate Authority”. One should not get punishment u/s. 25 of PCPNDT Act, 1994 for failing to provide documents on the said day. It can be a ground of pecuniary punishment but not for an imprisonment.

❖ *Other Suggestions*

**1. ABORTION RIGHTS OUGHT TO BE FOR ALL WOMEN**

Article 14 of the Indian Constitution speaks about equality before law. Thus, every woman ought to have the right to abortion under the MTP Act without any discrimination and prejudice. Limiting abortion rights only to married women amount to grave violation of other women’s rights which contradicts the rule of equality before law as guaranteed by the said Article of the Constitution of India.

**2. ABORTION RIGHTS OUGHT NOT TO BE USED AS POPULATION CONTROL MEASURES**

Abortion rights should not be used as population control measures under the Medical Termination of Pregnancy Act, rather it should be provided as the basic reproductive rights to all women.

**3. ‘ANGUISH’ IN SEC. 3 OF MTP ACT NEEDS TO BE REDEFINED**

More research is required to identify the specific situations which lead to causing anguish and distress in women having unwanted pregnancy.

**4. FORM F UNDER PCPNDT ACT**

- The current system of filling Form F under PNDT Act should be simplified as its very lengthy and also the language should be made easy. In every radiologist clinic there must be one government

appointed staff to help the patients in filling Form F and for maintaining the records also. This will help in monitoring of PNDT Act as well as Radiologists will be able to focus on their work more without misusing the PNDT Act.

- In very radiologist clinic there must be one government appointed staff for helping the patients for filling the Form F and for maintaining the record also. This will help in the monitoring of PNDT Act as well as Radiologist will effectively engage themselves in their work without misusing the PNDT Act.
- The current system of filling Form F under PNDT Act should be simplified as its very lengthy and also the language should be made easy.

## 5. MONITORING

- There is a provision for monitoring the health of TB patients i.e. whenever a patient is diagnosed with TB their reports have to be sent to the concerned department of the leprosy centre for record in every state. Similarly, such steps will be effective whenever a radiologist conducts PNDT on a woman in good faith. However, in emergency cases, he should report to the Chief Medical Officer (here in after referred to be as CMO) immediately about such cases. So that, from the CMO office, the monitoring of the woman's health may be conducted. Also Government can fix the charges of SD under PNDT Act. By doing this, misuse of the Act by anyone for making money by conducting illicit SD can be prevented. Also, whenever a woman will approach the CMO office for having SD under PNDT, it should be the duty of the CMO to investigate the case, and to find out whether SD is necessary for the benefit of woman and for the society as a whole.
- For PNDT only Government hospital should be allowed to do it. As by limiting the number of hospitals under PNDT proper monitoring will also be possible.
- Regular follow up should be done from the CMO office, for the cases where SD has been done. Also follow up and sudden sting operation

should be done in the clinics where MTP & PNDT is done for the prevention of its misuses and as a part of monitoring also.

#### **6. STRICT IMPLEMENTATION OF LAW**

Like PNDT Act, MTP provisions should be strictly implemented. If after SD, the same woman wants to go for abortion, in that case also she has to take permission from the CMO and she will also have to state the reason for it which CMO will record in the report along with the statement that whether he/she allowed the woman for abortion or not for SD under PNDT Act. Also, the government can allow only few clinics or hospitals for SD under PNDT Act, as minimum number of clinics for SD under PNDT will help in the proper monitoring of the law.

#### **7. ALL INDIA SYSTEM SOFTWARE**

The CMO office can create All India System software for recording the details of a patient accessible only by hospitals and CMO. It will be linked with the Aadhaar card so that every single detail and past medical history of the patients can be known to the doctors and the hospitals. Also, this will help the CMO to follow up on the patients who have done sonography from any laboratory or so and have or have not recorded anything about being in labor or of terminated pregnancy.

#### **8. PUNISHMENT**

- If a woman has gone through SD under PNDT Act and subsequently MTP and it has been done without the permission of CMO, in such a case all the doctors concerned should be punished. Regular follow ups from the CMO office should be done for the cases where SD has been done. Also follow ups and sudden sting operation should be done in clinics where MTP & PNDT is done for the prevention of its misuse and as a part of monitoring process also.
- If any woman has gone through SD under PNDT Act & subsequently MTP in such case all the doctors concerned should be punished if it is done without the permission of CMO.

#### **9. VIGILANCE TEAM**

Under PNDT Act, vigilance team should do vigilance directly on the patients as they are the subject of the PNDT Act.

## **10. PCPNDT IN POPULACE CONTROL**

PCPNDT Act should not be banned completely. Rather it should be included in the Five year family plan. PCPNDT Act should be limited to married couples for maintaining small and balanced family size. PCPNDT Act should be allowed in 2nd or 3rd pregnancy and not in 1st pregnancy. There must be one living child to avail the facility of PCPNDT. FOR PNDT doctor and state permission should be taken for preventing it from misused. Both MTP laws together with PNDT laws will be effective to control the population of India.

## **11. AADHAR LINKAGE**

Modern technology like linking of aadhar to all ultrasound machines will be help full for the proper monitoring of the PNDT provisions. Women will be allowed to avail the facility only when they will have aadhar card. By this proper monitoring is possible and misused of the PNDT can also prevented.

## **12. PERMISSIBLE NUMBER OF ABORTION**

Regarding the number of abortions which women can undergo for availing the benefit of PNDT, according to Dr. Veena Dubey, it depends upon the health of the women. In some women there is no negative impact even after third abortion. So, regarding that the medical council can limit the abortion up to two times like in surrogacy. But that limitation should be applicable only when women want to avail the facility of PNDT.

## **13. WRITTEN CONSENT**

Every city, Tehsil, village, had a CMO office. So, if any woman wants to do SD, in such case she should take written consent from CMO office. After doing SD on such women, the concerned radiologist should send an immediate copy of the report to the CMO office for proper maintenance of data & for monitoring of such cases where SD has been done.

14. According to Joan Diamond, women should be aware of their basic right then no one will be able to exploit them. She cited a story of one tribal girl from Jharkhand who agrees to marry only on the condition that she will give birth to only one child and no one should force her to give birth to number of children.
15. Lastly but not least MTP and PNDT though they are different in terms of their objects and reasons but both this law will be useful to control the population of India which is one of the major reasons behind every problem, whether it be unemployment, crime, famine, environment pollution etc.
16. Religious and cultural barriers should be removed and Govt. should strictly go for the law of two child policy.
17. The issue of abnormal gender proportion can be improved with the growth of the monetary conditions of our country like North Korea.

Lastly throughout the study it was found that if women themselves didn't fight for their basic right then no one will come forward to help her. Self help will always give fast and efficient result. Regarding the autonomy control, if reproductive rights and freedom is not given to the women then she won't be able to control her autonomy. Also for reproductive control, right to abortion for all women and selective abortion for married couples must be allowed. Without it no women is said to be free as this is her basic right. Regarding the female feticide, it's a crime but it's not a crime to wish both a male and female child. Balanced and small family is a need of society and as well as for the safety of the woman. Prohibiting them from producing many children in the desire to have a male child will help us to control the increasing population. From the study it can be summarize that selective abortion for married couples and abortion right for all women will be helpful in many aspects-

MERIT	DEMERIT
Population control	Female feticide
Control of infanticide	Abnormal Sex ratio
Control of MMR	Crime against women
Unwanted Child	
Maintaining Small and balanced family	
Proper monitoring of PCPNDT Act	

**Table- 2 Showing merit and demerit for allowing abortion and Selective Abortion**

Apart from this, Reproductive Right and Reproductive Control are the part of the Constitution of India under Article 21. But there are certain restrictions and limitations to this right in terms of its applicability. Right to Privacy under Article 21 should include abortion on demand for all women as it's their basic right and regarding selective abortion, it can be restricted up to married women for preventing the misuse.

*It's my life, my family, my womb, my children's, so decision should be mine regarding my reproductive rights. By this I would like to conclude my thesis.*