APPENDIX II(A)

Legalisation of Abortion:

During the last 25 years there have been gradual liberalization of abortion laws throughout the world. According to the population council's 1975 fact-book on induced abortion, only about 2 per cent of the world's population still live in countries where the law prohibits abortion without exception.

As a result of the recommendation of the Central Family Planning Board, the Government of India had appointed a Committee known as the Shantilal Shah Committee in 1964 to look into the problem of illegal abortions. The committee recommended in December 1966 the liberalization of law to ensure better health and avoidance of risk to the life of a pregnant woman. As a result of these recommendations, the Medical Termination of Pregnancy Act was passed by the Indian Parliament in 1971 and it came into force from April 1, 1972, implementing rules and regulations initially written in 1971 were revised again in 1975.
THE MEDICAL TERMINATION OF
PREGNANCY ACT 1971

The Medical Termination of Pregnancy Act, 1971 lays down:

1. The conditions under which a pregnancy can be terminated.

2. The person or persons who can perform such terminations, and

3. The place where such terminations can be performed

1. The conditions under which a pregnancy can be terminated under the MTP Act 1971:

There are 5 conditions that have been identified in the Act:

1. Medical - where continuation of the pregnancy might endanger the mother's life or cause grave injury to her physical or mental health

2. Eugenic - where there is substantial risk of the child being born with serious handicap due to physical or mental abnormalities
3. Humanitarian - where pregnancy is the result of rape

4. Socio-economic - where actual or reasonably foreseeable environments (whether social or economic) could lead to risk of injury to the health of the mother

5. Failure of contraceptive devices - The anguish caused by an unwanted pregnancy resulting from a failure of any contraceptive device/method can be presumed to constitute a grave mental injury to the health of the mother. This condition is a unique feature of the Indian Law and virtually allows abortion on request, in view of the difficulty of providing that a pregnancy was not caused by failure of contraception.

The written consent of the guardian is necessary before performing abortion in women under 18 years of age and in lunatics even if they are older than 18 years.

2. The Person of Persons who can perform abortion:

The Act provides safeguards to the mother by authorising only a Registered Medical Practitioner having experience in gynaecology and obstetrics to perform abortion where the length of pregnancy does not exceed 12 weeks. However, where the pregnancy exceeds 12 weeks and is not more than 20 weeks the
opinion of two registered Medical Practitioners is necessary to terminate the pregnancy.

3. Where abortion can be done:

The Act stipulates that no termination of pregnancy shall be made at any place other than a hospital established or maintained by Government or a place approved for the purpose of this Act by Government.

Abortion services are provided in hospitals in strict confidence. The name of the abortion seeker is kept confidential since abortion has been treated as a statutory personal matter.

MTP RULES (1975)

Rules and Regulations framed initially were altered in October 1975 to eliminate time-consuming procedures involved in MTP and to make services more readily available. These changes have occurred in 3 administrative areas.

1. Approval by Board:

Under the new rules, the Chief Medical Officer of the district is empowered to certify that a doctor has the necessary
training in gynaecology and obstetrics to do abortions. The procedure of doctors applying to certification Boards was removed.

2. Qualification Required to do Abortion:

The new rules allow for registered medical practitioners to qualify through on the spot training.

"If he has assisted a AMP in the performance of 25 cases of medical termination of pregnancy in an approved institution"

The doctor may also qualify to do RTPs under the new rules if he has one or more of the following qualifications which are similar to the old rules:

a) 6 months housemanship in obstetrics and gynaecology

b) a post graduate qualification in OBG

c) 3 years of practice in OBG for those doctors registered before the 1971 RTP Act was passed.

d) 1 year of practice in OBG for those doctors registered on or after the date of commencement of the Act.
3. The place where Abortion is performed;

Under the new rules, non-governmental institutions may also take up abortions provided they obtain a licence from the Chief Medical Officer of the district, thus eliminating the requirement of private clinics obtaining a Board licence.

Impact of liberalisation of Abortion;

The legalisation of abortion has been accompanied by a sharp decline in maternal mortality. A decline in maternal morbidity has also been reported. If abortion is widely resorted to, the birth rate may fall to unacceptable low levels as happened in Bulgaria and Romania. Repeated abortion is not conducive to the health of the mother. It has to be ensured that abortion does not replace the traditional methods of birth control. The numerous abortion hazards which are inherent should serve as a warning that abortions under the best of circumstances can never be as safe as efficient contraception.

Source - Park J. L. and Park K. - Text Book of Preventive and Social Medicine. M/S Banarsidas Bhanot Publishers
1167/ Prem Nagar Nagpur Road, Jabalpur - 482 001
(Demography and Family Planning Chapter)
APPENDIX II(B)

The 29th March 1972


MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi,

10th August, 1971

The _______________________

Sravana 19, 1893 (Saka).

The following Act of Parliament received the assent of the President on the 10th August, 1971 and are hereby published for general information—
THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

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

(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 section 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 recognised 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.

3. When pregnancies may be terminated by registered medical practitioners—(1) Notwithstanding anything contained in the Indian Penal Code, 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 provision of this Act (45 of 1860).
(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 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 as to be seriously handicapped.

Explanation 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.

Explanation II- 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 a 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 reasonably 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 clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

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. (1) Sections 3 and 4 when not to apply - 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 not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a 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.

Explanation - For the purposes of this section, so much of the provisions of clause (d) of Section 2 as relate to the possession, by a registered medical practitioner, of experience or training in gynaecology and obstetrics shall not apply.

6. (1) Power to make rules - 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 in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule of 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 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 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 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 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 or other legal proceeding shall lie against any registered medical practitioner for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

M. GOPALAKRISHNA,
Secretary to the Government of Assam,
Health & Family Planning Department.

N. H.A/FP.966/71-A - The following Notification published in the Gazette of India, dated 19th February 1972 is republished for general information :-

"In exercise of the Powers conferred by sub-section (3) of section 1 of the Medical Termination of Pregnancy Act, 1971 (34 of 1971), the Central Government hereby appoints the 1st day of April, 1972, as the day on which the said Act shall come into force".

( No. 867/70 Ply)

M. GOPALAKRISHNA,
Secy. to the Govt. of Assam, Health and Family Planning Department.

Source - Government of Assam Health and Family Planning Department

QAw relating to Medical Termination of pregnancies -
