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Medical Termination of Pregnancy (MTP) Amendment Act, 2021- Overview

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ABSTRACT

The most anticipated need for an amendment to the Medical Termination of Pregnancy Act (MTP Act) meets the latest amendment to the MTP Act, 2021, after receiving a promotion from the President of India dated 25.03.2021. A clear new offer related to privacy protection for a woman who wants to use MTP services are introduced and provide a penalty for a violation of one year, or with fine, or both. Live in relationship recognition is reflected in a few modifications and additions names in the definition I of the latest MTP Act, 2021. However, composition and constitution of medical board for termination of pregnancy beyond 24 weeks has been left to the discretion of concerned State Governments/UTs depending on availability of experts by notification of Rules under the MTP Act, 2021. The powers and functions of the medical board are also vested in the State Governments / UTs involved by notice of the Rules under the MTP Act, 2021. This paper deals with the critical review of the provisions of MTP Act, 2021 and its impact on the reduction of maternal mortality and illness in India. The author has made an effort to present information in a simple and easy-to-understand way of information among all stakeholders especially the medical brotherhood.

Keywords: MTP, Amendment, Abortion, Medical Board, Pregnancy.

INTRODUCTION

According to the Oxford Dictionaries, termination means “the deliberate termination of a person's pregnancy, which usually occurs within the first 28 weeks.”¹ Most pregnancies fail. About 20 percent of known pregnancies fail and it is estimated that many

more fail miscarriages so early that pregnancy is not even known. After pregnancy is detected, miscarriage up to 24 weeks is often referred to as 'spontaneous abortion' or 'abortion'; from 24 weeks to full time, it can be termed 'premature birth'.² In India, abortion is permitted in limited circumstances since the adoption of the Termination of Pregnancy (MTP) Act 1971,

which created an exception in the case of abortion under the Indian Penal Code, 1860. The main purpose of this law was human control and family planning³ and does not have a rights-based framework. The law is doctor-centered abortion and overuse, depriving pregnant women of their right to physical and decision-making and deciding to have an abortion with a doctor. On March 17, the lower house (Lok Sabha) of the Indian Parliament passed the MTP 2020 Amendment Bill, a new set of amendments to the nearly 50-year-old law. Sadly, the Bill failed to comply with the current Supreme Court of India's reproductive rights law⁴ and its fundamental rights to independence, physical integrity and privacy.⁵

Objectives of Medical Termination of Pregnancy Act, 1971

The preamble of the Medical Termination of Pregnancy Act, 1971 read as follows- "An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.⁶ Preamble clearly indicates the objective of the MTP act. That only certain pregnancy will be allowed to terminate under MTP Act by the registered medical practitioners. Also, the main objective of the act is to improve the maternal health of Indian women and to control the mortality rate of the women due to unsafe and illegal abortion. It was only after this act; safe abortion was available to women but that too under certain condition which I will discuss below.⁷

Circumstances For Termination of Pregnancy

The following are the circumstances in which a woman can terminate her pregnancy under section 3 of the said Act-

- Where there is a risk to the pregnant woman's health or severe physical or mental injury if the pregnancy continues.
- If there is a high risk that when a baby is born, it can suffer physically and mentally as a serious disability.
- If a pregnant woman is suspected of being pregnant it is the result of the rape.
- If the pregnancy occurs as a result of the failure of any device or method used by any married woman or her husband for the purpose of reducing the number of children.
- If the gestation period does not exceed 12 weeks.
- If the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks.

The MTP Act 1971 sets the gestational limit for abortion at 20 weeks, beyond which abortions may only be performed, barring a court order to the contrary, when there is risk to the life of the pregnant person. Even within this limit, however, doctors are often hesitant to provide abortion due to fear of investigations and prosecution.⁸

This results not only from the criminalisation of abortion under the Indian Penal Code, but also confusion surrounding the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 and the Protection of Children from Sexual Offences (POCSO) Act, 2012. These barriers to safe abortion access have resulted in numerous litigations across the country. A Pratigya Campaign study showed that from 2016 to 2019, 194 women petitioned courts seeking approval for abortion; 40 of these were for pregnancies below 20 weeks.²

In 2003, the Rules to the MTP Act were amended to conditionally allow certified providers, outside registered facilities, to provide medical abortion (MA) services up to seven weeks. Out of the 15.6 million abortions that occur annually in India, 81% are done using MA.¹⁰

While the greater availability of MA pills has resulted in an increase in access to abortion, the regulatory framework remains poorly implemented. Medical abortion is a safe and non-invasive method. However, the government has failed to ensure that a sufficient number of public healthcare facilities are equipped to provide abortion services; as a result, the majority of abortions are being sought in the private sector. This means an increase in costs, which can be prohibitive for marginalised groups, specifically those already facing barriers to healthcare access due to caste, religion, age and other factors.¹¹

Essential provisions of the MTP Amendment Act, 2021

Termination due to Failure of the Contraceptive Method or Device

Under the Act, a pregnancy can be terminated up to 20 weeks for a married woman if the contraceptive method or methods fail. It allows unmarried women to also abort pregnancy for this reason.

Opinion Needed to terminate Pregnancy

- a. A single Registered Medical Practitioner (RMP) for termination of pregnancy up to 20 weeks of pregnancy.
- b. Decision of two RMPs for termination of pregnancy 20-24 weeks of pregnancy.

- c. The opinion of the state-level medical board is important for pregnancy to be terminated after 24 weeks in the event of severe foetal malformations.

Upper Gestation Limit for Special Categories

Increases the maximum pregnancy rate from 20 to 24 weeks in special categories for women, including rape survivors, victims of incest and other vulnerable women (especially disabled women, minors, among others).

Table 1: The MTP Act 1971 and The MTP Act Amendments 2020

	Old Law	Present Amendments
Indications (Contraceptive Failures)	Only applied to Married females	Unmarried females are covered
Gestational Age Limit	20 weeks for all indications	24 weeks for rape survivors Beyond 24 weeks for substantial foetal abnormalities
Medical practitioner opinions required before termination	One RMP till 12 weeks Two RMPs till 20 weeks	One RMP till 20 weeks Two RMPs till 24 weeks Medical Board approval after 24 weeks
Breach of the women's confidentiality	Fine up to 1000	Fine and / or imprisonment of 1 year

Confidentiality

The “name and other particulars of a woman whose pregnancy has been terminated shall not be revealed”, except to a person authorised in any law that is currently in force.

Problems

Different Views on Termination

- One view is that abortion is a choice for the pregnant woman and part of her reproductive rights and the other is that the state has an obligation to protect life, and hence should provide for the protection of the foetus.
- Globally, countries set different conditions and time limits for allowing abortions, depending on the health of the foetus, and the risk to the pregnant female.

Not allowed for more than 24 weeks

1. The law allows abortion after only 24 weeks in cases where the Medical Board identifies serious foetal malformations.
2. This means that in a case that requires an abortion due to rape, lasting more than 24 weeks, the only way left is to apply for a Writ Petition.

Abortion will be performed by doctors

- a) The law requires that abortions be performed only by doctors who specialize in obstetrics or gynaecology.
- b) As per All India rural health statistics 2018 – 2019 there is a shortage of 75% of such doctors in public health facilities in rural areas, pregnant women may

continue to find it difficult to access safe abortion facilities.¹²

Release issue

At 18 weeks, couples begin to discover the possibility of a diagnosis of Down syndrome during their prenatal examination, which is recommended between 18 and 20 weeks.¹³

The antenatal screening tests include a blood test and an anomaly scan by ultrasound, which can reveal the possibility of a foetus having Down syndrome. The blood test measures alpha-fetoprotein, inhibin A, plasma protein A, estriol, and human chorionic gonadotropin.¹⁴

An anomaly scan can detect foetal abnormalities only after 18 weeks of gestation and costs around Rs. 3650 at the Apollo Centre of Fetal Medicine.¹⁵ The cost will range between Rs 2500-3500 anywhere in India. In the 22nd week, the couple received confirmatory test reports for the same.¹⁶

Considering the cost and risk of confirmatory tests, they are performed only if the screening tests are indicative. The process timeline involving screening tests followed by the confirmatory test could easily cross the legal limit of 20 weeks in cases when active investigations are not being sought to rule out congenital anomalies, as in most pregnancies. The socioeconomic background of the family and their rural habitat contributed to their lack of awareness of the application procedure and it therefore took them a further two weeks to appeal to the court for the right to abort. To add to this delay, the Supreme Court ordered another medical report, which was completed by the

25th week of pregnancy. During the 26th week, the Supreme Court passed its judgment.

It is clear that the background of the couple had played a major role in the delay in decision making along with the medical and legal systems that denied quick access to affordable tests, thereby further delaying decision making. By the time any decision could be made, the approved time for abortion as per the MTP Act had passed, leading to a miscarriage of justice.

In contrast to this, on January 16, 2017, the Supreme Court allowed a 22-year-old to terminate her 24-week pregnancy. The woman had been undergoing treatment in KEM Hospital and had been detected with foetal abnormalities during her 21st week of gestation. She was allowed to undergo abortion on the grounds that continuation of the pregnancy would have endangered the mother's physical and mental health. The family faced many legal hurdles and was mentally and emotionally exhausted by the whole process. However, due to their better socioeconomic means and because of being treated in a reputed hospital, the family had slightly easier access to and better awareness of the legal procedures.¹⁷

The amendments don't recognise abortion at will for any stage of pregnancy. Provider base should be widened and provision for upto 12 weeks abortions by AYUSH practitioners, staff nurses, medical officers, ANMs based on guidance by WHO should be introduced. There is a dire need to create awareness among all stakeholders so that pendency of such cases in courts is reduced thereby saving time and efforts of female victims and their relatives. State Governments/UTs should notify rules for medical board composition, powers and functions at the earliest. Time frame within which medical board should give its decision should be clearly specified as termination of pregnancy is a time

sensitive matter. Transgender Persons (Protections and Rights) Act, 2019 recognises transgender as an additional gender in India. Many studies have shown transgenders getting pregnant but unfortunately these amendments nowhere addresses MTP for transgenders.

The Supreme Court of India has enacted a stricter law on reproductive rights. In a landmark privacy decision, Justice Chandrachud argued that reproductive choice must be studied within the individual freedom guaranteed under Article 21 of the Indian Constitution. The MTP 2020 Amendment Bill also highlights the need to ensure "the dignity, independence, confidentiality and justice of women who need an abortion". However, the amendments do not convert to a change of power from a doctor to a person who wants an abortion. Therefore, abortion remains a conditional and not a complete right.¹⁸ Another concern to be addressed is 'Right to Life' of foetus.

CONCLUSION

The long legacy of safe abortion legislation that began in 1971 can be said to end only when India decriminalises abortion. Meanwhile, there is a need to create a member-based legal framework for abortion that is in line with the constitutional norms and obligations of India's international human rights law. The struggle continues - with legislation promoting the rights to equality, independence, physical integrity and privacy; and to the one who can change the environment in which people can exercise their full range of reproductive rights, and especially their independent decision-making to seek abortions.

Conflict of interest

Conflict of interest declared none.

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