

Medical Termination of Pregnancy Act, 1971: Its Emerging Dimensions and Brief Analysis

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Abstract

The right to an abortion is one of the most crucial aspects of reproductive justice and freedom. Advocates on all sides of the abortion debate have faced moral conundrums for millennia as they discuss the legalization and regulation of the procedure. It makes sense that India, a growing country with a diverse range of cultures, customs, socio-economic backgrounds, and religious views, would be battling this issue. Nonetheless, India has taken a firm stand on abortion since the 1970s. Since 1971, medical termination of pregnancy (MTP) has been permitted in India, preserving women's reproductive rights, personal independence, and the value of their health. These women experienced significant distress since they could not legally terminate a pregnancy after 20 weeks of gestation, which underscored the need to raise the maximum time frame for such terminations. Simultaneously, there has been an increase in global consciousness regarding women's autonomy over their own bodies. The MTP Bill, 2020, has been a welcome breath of fresh air as it eliminates the cap on abortions in the event of a serious fetal abnormality and extends the length limit for legal abortions to 24 weeks for specific groups of women. The President of India and Parliament just accepted the revisions, and as of March 25, 2021, they are now enforceable. The changes are discussed in this research along with how they may affect obstetric, ultrasound, and fetal medicine practices. Thus, at last in the paper, conclusion and suggestions have been provided. In the process of making this research paper, several journals, books and articles were referred and taken into consideration. Internet has also been a support in this process. Hence, this paper is a result of Doctrinal Research Methodology.

Keywords- abortion, reproductive justice, freedom, reproductive rights, fetal medicine practice

Introduction

“The right to life, liberty & pursuit of happiness begins with “life”, and “life” begins at conception.”

Women across the world are entitled to the right to procreate. This right is extremely important to society because it protects women from being forced to have or produce children against their will or because of discrimination. A woman's progenerative rights¹—the rights granted to parents to bear their own children—are violated when she is forced to undergo an abortion against her will. Simply put, a deliberate termination of a pregnancy is referred to as an "abortion." Throughout history, women have experimented with a variety of birth control techniques. They have also used abortion to rid themselves of unwanted pregnancies.

A spirited discussion about who will decide the fate of the unborn child in the womb—the pregnant woman, the husband's family, the wife's family, the government, or society at large—emerges on screen each time the pregnant woman declares her intention to abort the child. Whether a woman needs agreement to use her right to an abortion is a tough question to comprehend, given that we have already entered a period of socially conscious civilizations. Every time the subject of abortion is raised, we confront the pro-choice vs. pro-life debate.

The pro-life position forbids abortion, euthanasia, and other types of murdering people. Supporters of the pro-choice movement, however, assert that each person has inalienable rights to their body and that it is solely up to them whether or not to have children. The pro-choice movement defends women's fundamental rights, such as their capacity to seek abortions with medical assistance or to aid in becoming pregnant. A woman who forcibly exercises her right to an abortion is not so different from a woman who chooses to have an abortion of her own free will or who follows consensus-ad-idem with her spouse and family. An abortion against her husband's wishes puts a woman under physical and psychological stress, which might occasionally endanger her marriage.

¹ Shraileen Kaur, “Medical Termination of Pregnancy Act, 1971”, BLOG IPLEADERS (July 9th, 2022), <https://blog.ipleaders.in/medical-termination-of-pregnancy-act/>

Object and Purpose

The Medical Termination of Pregnancy Act, 1971 is a significant legislation enacted with the primary objective to provide women with safe and legal access to abortion services, under certain specified conditions. It aims to protect the health and well-being of women. Prior to its enactment, unsafe and legal abortions were rampant, leading to numerous complications and even deaths among women. By legalizing abortion under specific circumstances, the Act ensures that women can seek medical assistance from trained professionals, reducing the risks associated with unsafe procedures.

The Act also recognizes a woman's right to make decisions about her own body. It acknowledges that every woman has autonomy over her reproductive choices² and should have access to safe abortion services if she desires it. This empowers women by giving them control over their own lives and bodies.

Furthermore, the MTP Act addresses social issues such as population control and family planning. By allowing for legal abortions in certain situations, it helps prevent unwanted pregnancies which may lead to overpopulation or strain on resources. It also provides an avenue for individuals who may not be ready or able to raise a child responsibly, ensuring that they have options available to them. It also contributes towards reducing gender inequality by recognizing women's reproductive rights. It acknowledges that unwanted pregnancies can disproportionately affect women's lives and opportunities compared to men. By providing legal access to safe abortions, it helps level the playing field by giving women more control over their reproductive choices.

Therefore, the object and purpose of enacting the Medical Termination of Pregnancy Act are multi-faceted protecting women's health, promoting individual autonomy, addressing social issues such as population control and family planning while also contributing towards reducing gender inequality.

² Satvik N Pai and Krithi S Chandra, "Medical Termination of Pregnancy Act of India: Treading the Path between Practical and Ethical Reproductive Justice", NATIONAL LIBRARY OF MEDICINE, NATIONAL CENTER FOR BIOLOGICAL INFORMATION (July 14th, 2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10470576/>

Salient Features of this Act

The Medical Termination of Pregnancy (MTP) Act, 1971, is an important piece of legislation in India that governs the termination of pregnancies under certain conditions³. The Act has several salient features, which are as follows:

- **Legalizes Abortion under specified conditions:**

The MTP Act legalizes the termination of pregnancies under specific conditions, such as when the continuation of the pregnancy poses a risk to the life of the pregnant woman or endangers her physical or mental health.

- **Gestational Limit:**

The Act sets a gestational limit for legal abortions. It allows for abortions up to 24 weeks of gestation (after amendment of 2021).

- **Two Registered Medical Practitioners:**

The MTP Act requires the opinion of two registered medical practitioners for the termination of a pregnancy in certain cases. For pregnancies up to 20 weeks, the opinion of one medical practitioner is sufficient.

- **Certification of substantial risk:**

In cases where the pregnancy is beyond 20 weeks but less than 24 weeks, the termination requires the opinion of two medical practitioners who must certify that the continuation of the pregnancy would involve a substantial risk to the life of the pregnant woman or pose a threat to her physical or mental health.

- **Constitution of Medical Board:**

For pregnancies beyond 24 weeks, termination requires approval from the State Medical Board, and it can only be carried out if there is a substantial risk to the life of the pregnant woman or if the child would be born with severe physical or mental abnormalities.

- **Informed Consent:**

³ Veronica Arora and Ishwar C Verma, “*The Medical Termination of Pregnancy (Amendment) Act, 2021: A step towards liberation*”, RESEARCH GATE (May 10th, 2021), https://www.researchgate.net/publication/351470468_The_Medical_Termination_of_Pregnancy_Amendment_Act_2021_A_step_towards_liberation

The Act emphasizes the importance of obtaining informed consent from the pregnant women before conducting an abortion. Consent must be voluntary and based on a clear understanding of the procedure and its consequences.

- **Protection of privacy of women:**

The MTP Act places a strong emphasis on maintaining the confidentiality of the woman seeking an abortion. Her identity and personal information should not be disclosed without her consent.

- **Protection from prosecution for actions done in good faith:**

The Act provides protection from prosecution for medical practitioners who perform abortions in accordance with its provisions. It ensures that doctors can provide safe and legal abortion services without fear of legal repercussions.

- **Punishments for violations:**

The Act imposes penalties, including imprisonment and fines, for those who violate its provisions, such as conducting illegal abortions or revealing the identity of a woman seeking an abortion without her consent.

Overall, the Medical Termination of Pregnancy Act, 1971, aims to regulate and provide a legal framework for the termination of pregnancies in India to ensure that women have access to safe and legal abortion services while also safeguarding their health and well-being.

Lacuna of this Act

- Beyond 20 weeks of pregnancy, there is no legal right to terminate a pregnancy under the Act. There were also a lot of legal roadblocks. Therefore, it became necessary to enact legislation⁴ rising the gestational termination period from 20 to 24 weeks.
- One of the main goals of the Medical Termination of Pregnancy Act, 1971 was not met; it did not give pregnant women the safety and empowerment they needed to end their pregnancy at any time, according to their own free decision.

⁴ Devendra Jadav, Daideepya Bhargava and Tanuj Kanchan, “*Medical Termination of Pregnancy: A Global Perspective and Indian Scenario*”, SAGE JOURNALS (April 5th, 2023), <https://journals.sagepub.com/doi/abs/10.1177/00258172231155317>

- It has been said that the Medical Termination of Pregnancy Act is outdated and needs to be amended because it was passed in 1971, when technology was not as advanced as it is now.
- The act's provisions state that if the girl is under the age of eighteen or a minor, her guardian must give their written consent; if the woman is insane or deranged, they must give their consent before the age of eighteen.
- The Medical Termination of Pregnancy Act of 1971 was also accused of enhancing the complexity of already complex legal procedures. Simplified and more convenient provisions are required.

These obstacles constituted a significant deterrent for unmarried women seeking safe and authorized abortions. These obstacles might make it more difficult for women to get abortion services or perhaps prevent them entirely, which would be a violation of their right to reproductive autonomy.

Medical Termination of Pregnancy (Amendment) Act, 2021

The Medical Termination of Pregnancy (Amendment) Act, 2021, was created in response to the growing demand for better rules in the healthcare industry due to advances in technology and innovation. The Medical Termination of Pregnancy (Amendment) Act, 2021 tackled a number of concerns⁵, including the right to privacy and unlawful gender evaluation that results in female feticide.

The Medical Termination of Pregnancy (Amendment) Act, 2021 seeks to expand the list of women who can have an abortion to include victims of rape and assault, women who have survived incest, married women, girls under the age of 18, women with special needs, and women whose fetus has abnormalities. The Medical Termination of Pregnancy Act, 1971 is intended to be enlarged in scope by the Medical Termination of Pregnancy (Amendment) Act of 2021. A number of noteworthy aspects of the Act are covered in further detail below:

⁵ Sneha Kumari and Jugal Kishore, "Medical Termination of Pregnancy (Amendment Bill, 2021): Is it Enough for Indian Women Regarding Comprehensive Abortion Care?", NATIONAL LIBRARY OF MEDICINE, NATIONAL CENTER FOR BIOLOGICAL INFORMATION (October 13th, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8575235/>

- The Medical Termination of Pregnancy Act of 1971 is intended to be amended. The Sustainable Development Goals, which will help to eliminate the rate of avoidable maternal death, will be greatly aided by this Act.

The Medical Termination of Pregnancy (Amendment) Act of 2021 is aligned with the Sustainable Development Goals, which include universal access to sexual and reproductive health and rights (SDG Target 3.7) and a decrease in maternal mortality rate (SDG Target 3.1).

- According to the Act, one certified medical practitioner—rather than two—is needed to end a pregnancy with a gestation length of 20 weeks or less. Section 3(2) (b) of the Medical Termination of Pregnancy Act of 1971 previously stipulated the inclusion of the advice of two medical practitioners.
- It includes a new clause stating that if a pregnancy is ended between the ages of 20 and 24 weeks, two or more enrolled medical practitioners must consult.
- The Act aims to broaden the applicability of the Medical Termination of Pregnancy Act of 1971 by including a special classification of women such as specially-abled women, rape victims, girls younger than 18 years, and survivors of incest.
- This Act also expects to enhance the highest gestation period for pregnancy termination from 20 weeks to 24 weeks, because many women can take full advantage of it and effectively terminate their pregnancies that risk their own lives.
- The Act seeks to protect the confidentiality and privacy of women who wish to terminate their pregnancies. This is an intriguing idea that will respect women's personal liberties and protect their identities.
- No medical professional will reveal the name of any woman who wishes to terminate the life of her child in the womb in compliance with any law in effect at the time of the introduction of the Act.
- Instances in which a woman may need to have her pregnancy medically terminated include fearing for her life, deformities of the fetus, conceiving as a result of contraceptive technique or device failure, and conceiving as a result of sexual assault. All of these ailments have the potential to leave the conceiving woman with excruciating emotional suffering and sorrow.

Landmark Judgments

- ***KS Puttaswamy v Union of India***⁶

In this instance, the Indian Supreme Court explicitly recognized women's basic freedom to choose whether or not to have children under Article 21 of the Indian Constitution. Pregnancy termination therefore falls under the definition of "personal liberty" as stated in Article 21 of the Indian Constitution. The Medical Termination Act of 1971 thus acknowledges abortion as a legitimate right.

- ***Suchita Srivastava & Anr v Chandigarh Administration***⁷

This judgment is significant as it clarified and expanded the legal framework surrounding abortions in India and emphasized the importance of women's reproductive autonomy.

The case involved a pregnant woman who approached the Supreme Court seeking permission to terminate her pregnancy. The woman had been diagnosed with severe foetal abnormalities, and she argued that continuing the pregnancy would pose a serious threat to her mental and physical health. However, the pregnancy had advanced beyond the 20-week gestational limit prescribed by the Medical Termination of Pregnancy (MTP) Act, 1971 (prior to its amendment).

The Supreme Court ruled that a woman's right to make reproductive choices is a fundamental right protected under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

The court held that the MTP Act should be interpreted liberally to advance the reproductive autonomy of women. It emphasized that the Act should not be interpreted restrictively, as it would result in unwarranted intrusion into a woman's privacy and personal decision-making.

The judgment underscored the need to strike a balance between the protection of women's health and their autonomy to make decisions about their own bodies. It acknowledged that forcing a woman to continue a pregnancy that posed a grave risk to her mental or physical health could be a violation of her fundamental rights.

The Court also emphasized the importance of setting up medical boards or committees to access cases where women seek abortions beyond the 20-week limit due to foetal

⁶ (2017) 10 SCC 1

⁷ (2009) 9 SCC 1

abnormalities or risks to their health. These boards should include gynecologists, pediatricians, and other relevant experts.

The judgment highlighted the ethical and public health aspects of cases involving fetal abnormalities and risks to the mother's health. It recognized that forcing a woman to continue a pregnancy under such circumstances could result in unnecessary suffering and distress.

Overall, the *Suchita Srivastava's case* reaffirmed the importance of a woman's right to make choices about her reproductive health and clarified that the MTP Act should be interpreted in a manner that upholds and protects this fundamental right. It set an important precedent for future cases involving abortions in India, particularly in situations where the health and well-being of the woman are at risk.

- ***Meera Santosh Pal v Union of India***⁸

The Supreme Court held on the basis of the report submitted by the medical board directed to be constituted, that it was a case for termination of pregnancy as the woman was at the threat of severe mental injury if the pregnancy is continued and if the child were born alive, would need complex cardiac corrective surgery stage by stage after birth and there is high mortality and morbidity at every step of this staged surgeries.

- ***X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi***⁹

The Supreme Court declared that unmarried women are also entitled to seek abortion of pregnancy in the term of 20-24 weeks arising out of a consensual relationship and that exclusion of unmarried women who conceive out of live-in relationship from the Medical Termination of Pregnancy Rules is unconstitutional. The Court stated, "*All women are entitled to safe and legal abortion,*" adding that married and single women are not treated differently under the 2021 modification to the Medical Termination of the Pregnancy Act.

It was observed that a narrow interpretation of Rule 3B of the Medical Termination of Pregnancy Rules, 2003, limited only to married women, would render the provision discriminatory towards unmarried women and violative of Article 14 of the Constitution.

⁸ (2018) 13 SCC 339

⁹ 2022 SCC online SC 1321

The Court held that the common thread running through each category of women mentioned in Rule 3B is that the woman is in a unique and often difficult circumstance, with respect to her physical, mental, social, or financial state.

All the different categories in Rule 3B represent women who seek an abortion after 20 weeks either due to a delay in recognizing pregnancy, or some other change in their environment impacting their decision on whether the pregnancy is wanted or unwanted. The MTP Act respects a pregnant woman's right to reproductive autonomy, allowing her to decide whether to end her pregnancy by medical assistance. It is implied that this right includes the pregnant woman's access to medical facilities in order to achieve the best possible quality of sexual and reproductive health. Speaking about the latter without first addressing the first is pointless.

Suggestions

In the modern world, social security laws that support a pregnant woman in exercising her right to procreate freely and without undue influence or compulsion should be established, rather than making her situation worse. This is due to the moral, cultural, and physical difficulties associated with pregnancy abortion. A boundary between the interests of three key institutions—the mother carrying the fetus, the government, and social institutions—must be drawn in order to eradicate¹⁰ the biological, moral, and sociological stigmas attached to pregnancy termination.

Some of the issues surrounding pregnancy termination can be addressed by taking into account the following recommendations: -

- Since the method of teaching sex education in India is very problematic, academic institutions must make an effort to teach youngsters about the hazards involved with therapies like fertilization, surrogacy, and pregnancy termination, among other things. This will empower them to respond to similar situations in the future with extreme caution and care.
- To raise the standard of services provided for medical abortions, the Indian Central Government should work with the pertinent state governments. It is essential to use the

¹⁰ Mohd Kaleem Khan and Kashif Ali, "Medical Termination of Pregnancy (Amendment) Act, 2021: A Review", RESEARCH GATE (April 13th, 2022), https://www.researchgate.net/publication/359983438_Medical_termination_of_pregnancy_Amendment_ACT_2021_-_A_review

most modern developments in medical technology for pregnancy termination. Pregnant women's lives must be protected by the use of facilities and medically sound, appropriate methods.

- Counseling sessions on contraceptive methods should be led and organized by volunteers from non-governmental organizations.
- Establishing an urgent medical care hotline number is crucial so that instances involving abortion services that need immediate treatment may be handled quickly and efficiently.
- Initiatives must be made to support mothers who want to use internet sites to abort their children in emergency situations. Workshops on literacy and awareness need to be scheduled on a regular basis.

Conclusion

For women seeking safe abortions and those seeking to legally terminate unintended pregnancies the Medical Termination of Pregnancy Act, 2021 offers a glimpse of hope; to reduce and finally eradicate the practice of illegal abortions, India must yet take significant further steps. To permit pregnancy terminations, the government must ensure that all national healthcare institutions, including hospitals, adhere to the professional standards and laws.

Furthermore, the issue of pregnancy termination needs to be settled in a way that upholds technological improvements, good scientific principles, and human rights. The success or failure of the Medical Termination of Pregnancy Act, 2021 is determined by the strategies and processes used to implement its directions. If these guidelines¹¹ are implemented with the requisite care and effort, they may prove advantageous to women who wish to undergo abortions.

But thanks to the current Amendment Act, more women will have direct access to safer pregnancy abortion options, and those who must terminate a pregnancy will get fair care, respect, privacy, and liberty. The Central Government deserves commendation for taking such a brave stand while balancing it with the various cultural backgrounds, worldviews, and conceptual frameworks that our country embraces. However, the amendment still imposes a number of

¹¹ Abhinav Rana and Madhuri Paliana, "Review of Developments in the Medical Termination of Pregnancy", INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES (May 12th, 2022), <https://ijlmh.com/paper/review-of-developments-in-the-medical-termination-of-pregnancy/>

conditions on women, many of which make it difficult for them to access safe pregnancy terminations.

However, the fact that the topic of pregnancy termination and other matters pertaining to women is being tackled with greater vigor than in the past gives one hope that the country is moving forward. Hence, it was correctly quoted that:

“Reproductive freedom is critical to a whole range of issues. If we cannot take charge of this most personal aspect of our lives, we cannot take care of anything. It should not be seen as a privilege or as a benefit, but a fundamental human right”.

Bibliography

- https://www.researchgate.net/publication/359983438_Medical_termination_of_pregnancy_Amendment_ACT_2021-_A_review
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10470576/>
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8575235/>
- <https://vulj.vupune.ac.in/archives/8.pdf>
- https://www.researchgate.net/publication/307608358_Medical_Termination_of_Pregnancy_Act_A_Boon_or_a_Bane_for_a_Woman_in_India_-_A_Critical_Analysis
- <https://journals.sagepub.com/doi/abs/10.1177/00258172231155317>
- <https://www.ijrcog.org/index.php/ijrcog/article/view/873>
- https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/02122022_130549_1021205190.pdf
- <https://ijlmh.com/paper/review-of-developments-in-the-medical-termination-of-pregnancy/>
- <https://easletters.com/article/an-updated-review-of-indian-law-on-medical-termination-of-pregnancy-and-future-practices-igli73kxulfwz4f>
- <https://www.drishtiiias.com/daily-news-analysis/medical-termination-of-pregnancy-mtp-amendment-act-2021>
- <https://www.scsonline.com/blog/post/2021/01/09/women-and-the-law-an-analysis-on-the-medical-termination-of-pregnancy-law-in-india-vis-a-vis-the-medical-termination-of-pregnancy-act-1971-and-the-medical-termination-of-pregnancy-amendment-bill/>

- https://www.livelaw.in/pdf_upload/680-xyz-v-state-of-gujarat-21-aug-2023-490042.pdf
- <https://blog.ipleaders.in/medical-termination-of-pregnancy-act/>
- https://www.researchgate.net/publication/351470468_The_Medical_Termination_of_Pregnancy_Amendment_Act_2021_A_step_towards_liberation