

NAVIGATING INDIA'S ABORTION LAWS: EXAMINING THE KEY PROVISIONS AND SHORTCOMINGS OF THE MTP ACT AND ITS 2021 AMENDMENT

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ABSTRACT

The research article examines the trajectory of abortion laws in India, spanning from pre-1971 to the present day, particularly focusing on the Medical Termination of Pregnancy Act, 1971 and the recently introduced Medical Termination of Pregnancy (Amendment) Act, 2021. The article provides an overview of the key provisions of these legislative measures and also brings to notice their respective shortcomings, which have hindered pregnant women's access to timely and safe abortion procedures. By discussing the legal and social context in which these laws were introduced, the article aims to provide a comprehensive understanding of the evolution of abortion regulations in the country.

Pre-1971 India witnessed restrictive laws criminalizing majority of the abortions. The MTP Act, of 1971 marked a significant shift from punitive measures to a more compassionate and rights-based approach. However, it also could not remain aloof of limitations. Recognizing the need for further reforms, the MTP (Amendment) Act, 2021 was enacted, which, despite being progressive in nature, still fell short in certain aspects.

The article concludes by emphasizing that although the aforementioned acts were a significant step towards liberalizing abortion laws in India and upholding and safeguarding women's reproductive rights, the restrictions in the guise of medical liberalizations fail to effectively address the structural barriers faced by mothers seeking safe and legal abortions.¹

Keywords: Medical Termination Of Pregnancy, Registered Medical Practitioners, Gestational Limit, Women's Reproductive Rights, Grounds For Abortion, Personal Liberty.

INTRODUCTION

Abortion has long been a contentious issue, igniting debates that involve moral, ethical, political and legal dilemmas. Abortion is not merely a medico-technical issue anymore but is embroiled in a complex ideological conflict, encompassing the fundamental beliefs about the nature of the family, the role of the state, motherhood and women's sexuality. Generally, there

¹ "A CRITICAL ANALYSIS OF THE SHORTCOMINGS UNDER THE"
<https://vulj.vupune.ac.in/archives/8.pdf>. Accessed 23 May. 2023.

are two opposing perspectives on the legalization of abortion. The first viewpoint contends that a woman has the right to make decisions about her reproductive health, including the choice of whether or not to bear a child for a specific period of time. The other viewpoint maintains that a human fetus is a living human being with an inherent right to life, that the state is obligated to protect.²

Abortion laws in India have undergone several changes over the years, reflecting the changing socio-legal facets of the country. Prior to the enactment of the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the MTP Act), abortion was largely illegal in India, and women wanting to terminate their pregnancy had to resort to unsafe and life-threatening methods. The MTP Act was a landmark milestone in the country's reproductive rights movement, legitimizing abortion under certain conditions. However, in order to keep up with the changing times and address certain lacunae, amendments have been to the original legislation. The recent of these amendments, the Medical Termination of Pregnancy (Amendment) Act, 2021, further liberalizes abortion laws and expands access to safe and legal abortions. This article aims to provide an overview of the evolution of abortion laws in India and explores the key provisions and shortcomings of the MTP Act of 1971 and the MTP (Amendment) Act of 2021.

HOW ABORTION LAWS IN INDIA WERE REGULATED BEFORE 1971

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Before 1971, abortion laws in India were dealt with under sections 312 to 318 of the Indian Penal Code, 1862, which made it a crime punishable for both the mother and the abortion provider and equated it to deliberately causing miscarriage unless carried out to save the life of the woman. The abortionist would be punished with three years of imprisonment and/or a fine and the woman availing of the service would be punished with seven years of imprisonment and/or a fine.³

In the 1960s and 1970s, abortion was legalized in 15 countries, which initiated the discussion on a legal framework for induced abortion in India. During that time period, about five million abortions were carried out per year in India out of which three million were illicit. To address this issue, the government of India established Shantilal Shah Committee in 1964, which

² "Medical Termination of Pregnancy (Amendment) Act, 2021."

<https://www.legalserviceindia.com/legal/article-6037-medical-termination-of-pregnancy-amendment-act-2021.html>. Accessed 23 May. 2023.

³ "Medical Termination of Pregnancy Act, 1971 - iPleaders." 9 Jul. 2022, <https://blog.iplayers.in/medical-termination-of-pregnancy-act/>. Accessed 23 May. 2023.

analyzed the concept of termination from various angles. The committee suggested legalizing abortions to prevent maternal morbidity and mortality on compassionate and medical grounds.⁴ Based on the recommendations of the committee, the Medical Termination Bill was proposed in the houses of the parliament in 1969, which was later passed by the parliament in August 1971. As a result, MTP Act came into effect on April 1, 1972.

While some states viewed the suggested legislation as a viable approach to control population growth, the committee expressly rejected the idea of legalizing abortion for the purpose of population control. Rather, it underscored that legalizing abortion for demographic reasons could be detrimental to the constructive and beneficial practice of contraception and family planning.⁵

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

KEY PROVISIONS OF THE MTP ACT, 1971:-⁶

- No pregnancy shall be terminated except with the consent of the pregnant woman. The husband's consent is irrelevant.
- A registered medical practitioner who carries out an abortion in accordance with the provisions of the act should not be held guilty of any crime mentioned in the Indian Penal Code, 1860, or any other legislation in force at that time.
- Authorization by one doctor is required for the termination of pregnancy up to twelve weeks.
- The opinion of two doctors is required for the termination of pregnancy between twelve to twenty weeks.
- Situations in which pregnancy may be terminated:
 - If the woman continues with her pregnancy, there is a possibility that her life would be at risk or that her physical or mental health would be hampered.
 - If the child were born, there is a probability that it would suffer from physical or mental abnormalities and may also be handicapped.

⁴ "Abortion in India - Wikipedia." https://en.wikipedia.org/wiki/Abortion_in_India. Accessed 23 May. 2023.

⁵ "A CRITICAL ANALYSIS OF THE SHORTCOMINGS UNDER THE" <https://vulj.vupune.ac.in/archives/8.pdf>. Accessed 23 May. 2023.

⁶ "MTP ACT, 1971 | Ministry of Health and Family Welfare | GOI." <https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-1971>. Accessed 23 May. 2023.

- Married women need to demonstrate the inadequacy of their contraceptive methods in order to be eligible for medically terminating the pregnancy.⁷
- If there is a breach of the woman's confidentiality, the act provides for the imposition of a fine up to Rs. 1000.⁸
- The abortion of a minor girl or a lunatic girl who has attained the age of eighteen years shall be carried out only with the written consent of her guardian.
- Abortion can be carried out either in a hospital established or maintained by the Government or a place for the time being approved for the purpose of this act by the Government.

SHORTCOMINGS OF THE MTP ACT, 1971:-⁹

- The principal act takes only married women and rape survivors under its purview. Unmarried women, widows, and divorced women do not have access to legal abortion under this act.
- Under this act, pregnancy cannot be terminated beyond twenty weeks. If in case fetus develops abnormalities or the mother experiences distress and the gestational period exceed the permissible limit, then in that situation the pregnant women (including rape victims) were compelled to bear the child.
- Under the act, the failure of contraceptives as a ground for termination of pregnancy was only available to a married woman and her husband.
- The act disregarded the fundamental right of a woman to exercise bodily autonomy and make decisions regarding the termination of her pregnancy on her own accord.

There were several petitions filed in the Supreme Court and high courts asking for permission to terminate unwanted pregnancies at stages beyond the then permissible limit owing to a fetal anomaly or pregnancies due to rape. By analyzing the then-prevalent situation, the Indian legal system allowed for the termination of pregnancy beyond the period of twenty weeks on the grounds of fetal abnormalities or pregnancies caused by sexual assault and acknowledged that

⁷ "Medical Termination of Pregnancy Act, 1971 - iPleaders." 9 Jul. 2022, <https://blog.iplayers.in/medical-termination-of-pregnancy-act/>. Accessed 23 May. 2023.

⁸ "Medical Termination of Pregnancy (MTP) Amendment Act, 2021." 4 Aug. 2021, <https://www.drishtias.com/daily-updates/daily-news-analysis/medical-termination-of-pregnancy-mtp-amendment-act-2021>. Accessed 23 May. 2023.

⁹ "Medical Termination of Pregnancy Act, 1971 - iPleaders." 9 Jul. 2022, <https://blog.iplayers.in/medical-termination-of-pregnancy-act/>. Accessed 23 May. 2023.

the Right to Terminate Pregnancy could not be rejected only because the gestation period had progressed beyond the statutory duration.¹⁰

THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021:

In the wake of advancements in medical technology, the Medical Termination of Pregnancy (Amendment) Bill, 2020 was introduced by the Ministry of Health and Family Welfare in the Lok Sabha on March 02, 2020. After receiving presidential approval on March 25, 2021, it became the Medical Termination of Pregnancy (Amendment) Act, 2021 (hereinafter referred to as MTP (Amendment) Act). The act came into operation on September 24, 2021.¹¹

The new act broadens access to safe and legal abortion facilities for therapeutic, eugenic, humanitarian and social purposes to guarantee that comprehensive abortion care (CAC) is equally accessible and ensures dignity, autonomy, secrecy, and justice for women who want to avail abortion services.¹²

KEY PROVISIONS OF THE MTP (AMENDMENT) ACT, 2021:-¹³

- If pregnancy is terminated within 12 weeks of conception, then the opinion of one doctor is required and if it is done between 12 and 20 weeks, then the opinion of two doctors is required.
- If a pregnancy has to be terminated after 24 weeks of gestation period on the ground of substantial fetal abnormalities, then the act has provided for the formation of Medical Boards by all state and union territory administrations, which has been authorized to take a decision in this regard. The state government will appoint a gynecologist, pediatrician, radiologist/sonologist and other members to each board.
 - Upon receiving a request for medical termination of pregnancy, the medical boards must make a decision to either approve or decline the proposal within a maximum of three days.
 - The abortion procedure has to be carried out within five days of the medical board receiving the request for the same.
- Situations in which pregnancy may be terminated:

¹⁰ Ibid

¹¹ "Abortion in India - Wikipedia." https://en.wikipedia.org/wiki/Abortion_in_India. Accessed 23 May. 2023.

¹² "Medical Termination of Pregnancy (Amendment) Act, 2021." <https://www.legalserviceindia.com/legal/article-6037-medical-termination-of-pregnancy-amendment-act-2021.html>. Accessed 23 May. 2023.

¹³ "Abortion in India - Wikipedia." https://en.wikipedia.org/wiki/Abortion_in_India. Accessed 23 May. 2023.

- If the continuance of the pregnancy would involve a risk to the life of the pregnant woman.
- If the child is born, it could potentially experience severe physical or mental abnormalities.
- Abortion can be carried out either in a hospital established or maintained by the Government or a place for the time being approved for the purpose of this act by the Government.
- The name and other particulars of a woman who has undergone an abortion shall not be revealed to anyone except to a person permitted in the present law. In case of a breach of the woman's confidentiality, the act has a provision of imposition of a fine and/or imprisonment of one year.
- In a welcome step, the MTP Amendment Act expanded the right to terminate the pregnancy to "any woman or her partner". This means that now the pregnant woman, irrespective of their marital status, can abort her pregnancy provided the gestation period has not exceeded twenty weeks in case of failure of the contraceptive method or device.
- Provision has been made to increase the upper gestation limit from 20 to 24 weeks for specific categories of women. These include:
 - survivors of sexual assault or rape or incest,
 - minors,
 - widows, divorced women (change in marital status)
 - women with physical disabilities,
 - pregnancies where fetal malformation poses a significant risk of being incompatible with life or if it is likely that the child will suffer from serious physical or mental abnormalities upon birth,
 - mentally ill women and
 - pregnant women in humanitarian settings or disaster or emergency situations.
- The act does not specify which women qualify for abortion between 20 weeks and 24 weeks and instead leaves it to be determined by rules.¹⁴

¹⁴ "Medical Termination of Pregnancy (Amendment) Act, 2021."
<https://www.legalserviceindia.com/legal/article-6037-medical-termination-of-pregnancy-amendment-act-2021.html>. Accessed 23 May. 2023.

SHORTCOMINGS OF THE MTP (AMENDMENT) ACT, 2021:-

- Medical research has shown that hormonal therapy can enable transgender men to become pregnant while transitioning from female to male. Therefore, it becomes essential to ensure that all individuals, including transgender men, have access to comprehensive reproductive health care services, including abortion. However, the existing legal framework around abortion only grants access to termination services to "women" and not "any person," leaving transgender individuals unsure if they are protected under these laws.¹⁵
- The act does not permit carrying out an abortion of a rape survivor in case the gestation period has advanced to more than twenty-four weeks. In that case, a writ petition remains the last resort.¹⁶
- The MTP Amendment Act perpetuates the absence of a framework based on rights as seen in the principal act. It merely grants exemption from criminal liability and fails to grant women a sole right over their bodies and reproductive decisions. Not providing for abortion on demand leads to forced pregnancies, which goes against pregnant woman's human rights including the rights to life and personal liberty, privacy, freedom from gender discrimination and freedom from ill-treatment.¹⁷

CONCLUSION

It is commendable to see that while the United States of America and other countries are attempting to overturn laws regarding the medical termination of pregnancy, India has managed to retain and update its legal framework pertaining to the same. Although there have been substantial improvements in abortion laws, women are still imposed with various conditionalities that impede their ability to access safe abortion.

In the case of Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), the Apex Court recognized that the woman has a constitutional right to make reproductive choices as a part of her personal liberty, enshrined under Article 21 of the constitution, which despite laying a robust legal framework on reproductive rights and privacy of a woman, does not fundamentally

¹⁵ Ibid

¹⁶ "Medical Termination of Pregnancy (MTP) Amendment Act, 2021." 4 Aug. 2021, <https://www.drishtias.com/daily-updates/daily-news-analysis/medical-termination-of-pregnancy-mtp-amendment-act-2021>. Accessed 23 May. 2023.

¹⁷ "Medical Termination of Pregnancy Act, 1971 - iPleaders." 9 Jul. 2022, <https://blog.iplayers.in/medical-termination-of-pregnancy-act/>. Accessed 23 May. 2023.

alter the power dynamic between a woman seeking an abortion and her doctor. It is a clear indication that a women's bodily autonomy primarily lies with the state rather than with her.

Overall, it is pertinent to note that there is still a long way to go in ensuring that pregnant women/ persons have access to safe, legal, and affordable abortion services. It is imperative to continue directing efforts in promoting a legal and healthcare system that is inclusive in nature and respects **persons'** reproductive rights.

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