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# **MEDICAL TERMINATION OF PREGNANCY - BEFORE AND AFTER AMENDMENT 2021**

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## **ABSTRACT**

The Medical Termination of Pregnancy (MTP) Act limits pregnancy termination to 20 weeks unless it is suddenly necessary to preserve the pregnant woman's life. However, in rare exceptional circumstances, judgements in favour of termination have been rendered even after the specified time limit had passed. Unwanted pregnancy, particularly if the result of rape, victims of incest is regarded as a social disgrace all over the world, yet the physical and mental anguish endured by the woman in prolonging the pregnancy is sometimes neglected. To some extent, relief from such a burden is feasible if pregnancy termination is conducted in all circumstances when continuation is not requested or intended by the pregnant lady.

**Keywords:** pregnancy, abortion, illegal abortion, MTP Act, unmarried women, women's right

## **Research Methodology**

For this research, I have studied various case law articles, journals and books

### **Abbreviation:**

1. MTP ..... Medical Termination of Pregnancy
2. S..... Section
3. i.e..... that is
4. MTPA.....Medical termination of pregnancy act
5. RMP.....Registered Medical Practitioner

### **Objectives:**

1. Shortage of doctors in rural areas leads to difficult access to healthcare facilities and abortion.
2. The law does not consider non-medical conditions for termination of pregnancy like economic costs of raising a child.
3. The Amendment Act 2021 still requires a doctor's permission to get an abortion, hence making it a doctor-centric legislation.

## **Introduction**

Independence is pointless until one has complete control over one's body. Abortion is an issue of personal liberty and privacy for a woman. Those women who believe that abortion is in their best interests must be respected. Those who do not believe in it should keep their faith to themselves and not push it on others.

Abortion has been a topic of debate for a long time in India. However, it has never been in a political debate, unlike the West. It could be because abortion has never been a controversial topic in moral and religious perception in Indian masses and hence an agenda for political parties.

With the recognition of the right to privacy under the right to life and liberty, article 21 as a fundamental right in India by the Supreme Court, the legal trend in the area of abortion is undergoing major changes. The right to life also means the right to abortion guaranteed under Article 21 of the Indian constitution. A mother's life takes precedence over the life of an unborn child.

In *K.S. Puttaswamy v. Union of India*, the nine bench unanimously held that the right to privacy is a fundamental right. It is an essential part of dignity and liberty. Under this case, it was established by the Supreme Court that reproductive choice is an individual's personal liberty under Article 21 of the Indian constitution.

According to the Oxford Dictionary, abortion is defined as "the deliberate termination of a human pregnancy, most often performed during the first 28 weeks"

Thus, we can say that abortion means the termination of early pregnancy, mostly during the first four months from the date it was conceived because during that time if the fetus is born it cannot survive. Termination of pregnancy is an exception to the Indian penal code as this act allows to termination of pregnancy up to a certain time by a certified medical practitioner.

Abortion can be done in two ways-

1. Medical abortion- If a woman is pregnant for less than seven weeks then medical termination of pregnancy can be done by a physician. In this type of abortion tablets and medications were given to the pregnant woman to terminate her pregnancy.
2. Surgical abortion- A woman can get an abortion if she so wants after seven weeks of pregnancy from the date of conception with surgical abortion. This method has less chance of being unsuccessful than a medical abortion.

Before the act of medical termination of pregnancy, 1971, the Indian penal code dealt with abortion under sections 312-316, according to which an abortion done with or without the consent of women is punishable, except in the case where the life of the women is in danger and in no other circumstances does the abortion is allowed.

S.312 makes it a punishable offence for miscarriage done under bad faith and the person could be imprisoned for three years or with fine or with both. This act led to an increase in illegal and

unsafe abortion which further increased the death rate of women who are pregnant. Hence a new law was introduced known as the Medical Termination of Pregnancy Act, 1971 to regulate illegal abortion.

### **Medical Termination of Pregnancy, 1971**

(A) S.3 of MTP,1971 states when a person can get pregnancies medically terminated by a registered medical practitioner and according to this-

1. A woman can get an abortion within twelve weeks from the date of conception;
2. In special circumstances a pregnant woman can get an abortion if the pregnancy does not exceed twenty weeks given that the continuance of pregnancy is fatal for the pregnant woman or if it will affect her physical or mental well-being or if there is a risk of the unborn child that if it were born it will suffer from mental or physical abnormality.
3. if the woman has not attained the age of majority i.e., she is below eighteen years of age or if she is a lunatic then she is only allowed for the termination of pregnancy if there is written consent by her guardian. The POCSO Act, of 2012 criminalizes sexual activity with anyone who is a minor. If the minor has a consensual sexual relationship and gets pregnant, she has the right to get an abortion, wherein the RMP is obligated to report to the police under section 19(1) of POCSO if a minor approaches him or her for an abortion.
4. Apart from (3), no pregnancy shall be terminated if there is no consent given by the pregnant woman herself.

(B) According to S.4 of MTP,1971 a pregnancy can be terminated in a hospital that is established by the government.

(C) S.5 of the act states that any person who is not a registered medical practitioner cannot abort a baby and if it is done then it is a punishable offence with imprisonment of two years but it may extend to seven years under the code.

S.5A states that no medical practitioner is allowed to reveal the name and identity of the woman who is terminating her pregnancy and if it is done then the practitioner can be punished with one year imprisonment or with fine or with both.

So that leads us to understand that there are different facilities for legal and safe termination of pregnancy. So the question is does the act really help women to get safe abortions? The answer is no. Under the Medical Termination of pregnancy act, 1971 only married women and women who were victims of rape, victims of incest can get an abortion. Women who are unmarried, widows or divorcees do not have the right to abort under this act. and hence they opt for illegal abortions which are unsafe and could be fatal. It infringes on the fundamental rights of women. Even in the case of married women, they have to prove that the pregnancy was the result of the failure of contraceptive measures which is a violation of the right to privacy.

As a result, there was the introduction of medical termination of pregnancy (Amendment), 2021 to expand safe and legal abortions.

### **Salient features of the MTP Amendment Act, 2021**

1. Under the present act, pregnant women can get an abortion within twenty weeks from the date of conception which was due to the failure of the contraceptive method. It allows unmarried women, divorcees, or widows to get safe abortions.
2. The opinion of one registered medical practitioner is required for the termination of pregnancy if it is twenty weeks, and two registered medical practitioners for the termination of twenty to twenty-four weeks of gestation.
3. Under special circumstances, women can terminate pregnancy even after twenty-four weeks of pregnancy if they are victims of rape, incest, or other vulnerable women or if the medical board diagnoses substantial foetal abnormalities. The permission for termination of pregnancy will be given by a recognized court of law after giving a writ petition.
4. The name and identity of the woman who is terminating her pregnancy should not be disclosed except to the person authorised by law. If not followed, then it is a punishable offence and the punishment is one year of imprisonment or fine or both.
5. Failure of any contraceptive device or method is also a ground where a woman or her partner could ask for an abortion.

**Rule 3B of MTP (Amendment) Rules, 2021**

This rule lays down the categories of women who are eligible for termination of their pregnancy up to twenty-four weeks, following are the mentioned women-

1. Survivors of rape, incest;
2. Minors;
3. Unsound mind or lunatic women;
4. Widows or divorcees;
5. Women with a physical disability as per the Rights of Persons with Disabilities Act, 2016;
6. Foetal malformation that has a substantial risk of life;
7. Women who are pregnant during a disaster or emergency that may be declared by the government.

This amendment not only ensures access to the safe and legal termination of pregnancy but also women's dignity, autonomy, confidentiality, and mental and physical health as unmarried women now have the same rights as married women. Every pregnant person in India has reproductive rights, let it be a pregnant woman, transgender or gender-variant person which makes it efficient for them to choose what they want. It is a step towards women's safety and health. Also, the fact that there is no basis for denying the rights to unmarried women that were given to other categories of women.

In X V. The principal secretary, health and family welfare department, Govt. of NCT and Anr., it was held by the supreme court that all women irrespective of their marital status are entitled to termination of pregnancy if they so want within 24 weeks from the date of conception as MTPA recognises the reproductive right of every pregnant woman. The three-judge bench notes that as per the MTP Act, 2021 the phrase 'married woman' is now changed to 'any woman' and the phrase 'husband' is now replaced with 'partner'.

In another bizarre case of X V. Union of India (2023), a 27-year-old married woman who is a

mother of two children went to the apex court for MTP. She has a condition of lactational amenorrhea which leads breastfeeding mothers to not menstruate and as a result, she discovered her pregnancy at around 24 weeks. The Supreme Court denied her the medical termination of pregnancy and the rights of an unborn child take precedence over the reproductive anatomy of the mother. The court held that the petitioner is not under the categories of women of S.3(2B). Despite the petitioner's submission of mental health issues, postpartum depression and suicidal tendencies, the court refused to grant her permission for abortion.

### **Suggestions**

1. Abortions should be allowed at any stage if it is found that the mother's life is in danger or if there is any substantial risk to the foetus;
2. Pregnant women, both mental and physical health, should take precedence over the rights of an unborn child;
3. Every woman should have the right to abortion without it being a doctor-centric legislation;
4. Awareness programs are necessary for everyone to know their reproductive right especially women from rural areas who are usually not aware of their rights and media could play a vital role in that;
5. MTP should be easily accessible in case of a medical emergency.

### **Conclusion**

Every woman should have the right to abortion as it is the woman who has to carry the foetus for 9 months and not the government. A woman's life should always take precedence over the life of an unborn child that is yet to take its first breath. Now after the 2021 amendment, there have been some major changes to the MTP Act but we still have a long way to go. A woman's mental health and financial ability to raise the child should also be a concern while granting for abortion.

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