

Evolving Legal Framework: Medical Termination Of Pregnancy Act, 1971

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ABSTRACT

The Medical Termination of Pregnancy (MTP) Act is a legal framework that governs the conditions and procedures under which pregnancies can be terminated or aborted. The MTP Act deals with the ethical issues surrounding ending pregnancies using either medical or surgical means. It was implemented to replace the stringent, obsolete abortion laws that remained in effect following British colonial rule. The MTP Act has undergone major changes over time in order to improve implementation and increase access to secure abortion services. The MTP Act is used in practice in the case of Mrs Farzana Ali Ahmed Sayyed vs. the State of Maharashtra, which was heard in the Bombay High Court in February 2020. When Mrs Sayyed was in the 22nd week of her pregnancy, she requested authorization for a medical abortion. Severe prenatal malformations were discovered via ultrasound, endangering both the mother's mental health and the potential offspring. The court accepted the Medical Board's recommendation to terminate. The court granted authorization based on the Act and pertinent judgements after the Medical Board's recommendation for termination. These rights have recently been expanded by the 2021 amendment. However, successful implementation and ongoing advocacy are essential to address issues and advance the wellbeing of women in this significant area of healthcare.

Keywords: MTP act, Bombay high court, legal aspects, women's well-being, amendment.

1. Introduction

The term "medical termination of pregnancy" (abbreviated "MTP") refers to the ending of a pregnancy through the use of medications or surgical treatments. The Medical Termination of Pregnancy Act, 1971 (often known as the "MTP Act"), is the main piece of legislation in India that controls abortions and other forms of legal pregnancy

termination. The primary reason for incorporating this legislation is to fill in the gaps left by the earlier provisions regarding abortion in India, which were included in the Penal Code of 1860 and heavily influenced by British law at the time. The right to abortion is one of the most significant aspects of reproductive freedom and justice. The controversy over abortion legalization and regulation has created moral conundrums for supporters of both sides of the issue for millennia. Here are two opposing views, and pro-life and pro-choice activists frequently spar in political, medical, and legal arenas.^[1] Several wealthy countries have tried to find a solution to this thorny topic.^[2] It makes sense that India, a developing country with a diverse population of cultures, traditions, socioeconomic situations, and religious beliefs, would be struggling with this issue. Abortion even faced significant logistical issues given the poor infrastructure, limited access to healthcare, and disregard for women's health.

However, India has taken a definite stand against abortion since the 1970's. Medical Termination of Pregnancy (MTP) has been permitted in India since 1971, in accordance with the principles of personal freedom, women's reproductive autonomy, and the value of their health. Since then, additional MTP-related moral and legal concerns have emerged. Additionally, the legislation modified the regulations governing MTP in accordance with the changing times and medical technology. We examine the rules governing abortion in India, the moral and practical issues, the most recent changes to these laws, and the future.^[3] It has been in force since 1971 and was most recently modified in the year 2020. The amendment claims that the window of opportunity for abortion has been extended. Today, the abortion can be performed between 20 and 24 weeks. According to the regulations under the "medical termination of pregnancy" act, the women's consent is regarded as having the highest priority. However, if a female under the age of 18 becomes pregnant, her guardians have the authority to determine whether to terminate the child. The goal of this law is to safeguard the interests of young girls. With this law, the interests of girl children in society are to be protected, and the viewpoint of a prospective mother is to be given precedence.^[4]

2. Brief History

Abortion was forbidden and criminalized in India up until the 1970s. The Indian Penal Code (IPC) Section 312 imposes a maximum sentence of three years in prison and a fine for female offenders. This statute, which was in place for more than a century, was a by-product of Victorian English morality.^[5, 6]

The Indian Central Family Planning Board established the Shantilal Shah Committee in 1964 to examine the nation's abortion laws. With the aim of enhancing the effectiveness of abortion while reducing the incidence of unsafe and illegal procedures leading to miscarriages and maternal deaths, the committee recommended a relaxation of abortion regulations. It sought to investigate and evaluate the moral, social, legal, and medical justifications for abortion. On December 4th, 1966, the Shantilal committee submitted a comprehensive report detailing its observations of the prevailing circumstances. Subsequently, a Medical Termination Bill, aligning with the committee's recommendations, was presented in both the Lok Sabha and Rajya Sabha in 1969, receiving parliamentary approval in 1971.^[6, 7] Beginning in 1972, the Medical Termination of Pregnancy Act went into effect. In 1975, the Act underwent additional changes that improved its clarity and usefulness. With the adoption of this law, getting an abortion that is approved by the law will now be easier in some circumstances. It allows for pregnancy termination by a credible, licenced medical professional. What the act entails in detail is made abundantly apparent in the introduction. According to the Medical Termination of Pregnancy Act of 1971, only a licenced medical expert has the right to end a pregnancy in certain situations.^[7]

On April 1, 1972, the Medical Termination of Pregnancy (MTP) Act, which was applicable to the entire country of India, went into effect. In 1975, the MTP Rules were created. Doctors who perform abortions in compliance with the MTP Act's provisions are exempt from punishment under Section 312 IPC. The MTP Act permitted registered medical practitioners to perform abortions under specific conditions. Abortion was legal up until 20 weeks of pregnancy under the MTP Act. Abortion rights and protections are provided in the MTP Act in several ways. These consist of:

- Allowing the termination of undesirable pregnancies for up to 12 weeks, and up to 20 weeks with the consent of

a second doctor.

- Protection against civil or criminal action for harm caused to a woman during an abortion process by certified allopathic medical practitioners, provided the abortion was performed in accordance with the MTP Act's guidelines.
- Allowing abortions when there is a serious risk to the woman's bodily or mental health, when the pregnancy was unintended or resulted from rape, or when there is a good reason to believe the child will be born with a disease or deformity.^[5]

3. Amendments

3.1 MTP Act, Amendments, 2002:

- In 2002, amendments were made to the Medical Termination of Pregnancy (MTP) Act, leading to improved implementation and increased accessibility for women, especially within the private health sector.
- Alterations to the MTP Act in 2002 shifted the authority to authorize private institutions for abortion procedures to the district level. The District level committee now holds the authority to grant permission to private establishments to offer MTP services, aiming to expand the pool of service providers offering Comprehensive Abortion Care (CAC) services while adhering to legal constraints.
- "Mentally ill person" was used in place of the word "lunatic." This modification in terminology was implemented to emphasize that a "mentally ill person" is someone who requires care due to a mental condition other than mental retardation.
- Stricter penalties were added by the Act for MTPs carried out in prohibited locations or by untrained medical professionals in order to ensure compliance and the safety of women.^[8]

3.2 MTP Rules, 2003:

The MTP Rules enhance execution and broaden women's accessibility, especially within the private healthcare sector.

- Members of the District Level Committee and their terms of office: Per the MTP Rules of 2003, the committee's membership is required to include one woman and one each from the local medical community, non-governmental organisations, and the district's Panchayati Raj Institutions. It also must include one gynaecologist, one surgeon, and one anaesthetist.
- Approved location for delivering medical abortions: The MTP Rules of 2003 contain detailed requirements for the tools, resources, medicines, and connections to superior facilities needed by an approved location to deliver high-quality CAC and post-abortion treatments.
- Inspection of a private location: Per the MTP Rules from 2003, the Chief Medical Officer (CMO) is entitled to do as many inspections as necessary to confirm that abortions are being carried out in a sanitary and safe environment at a private location.
- If the CMO of the District determines that the facilities described in rule 5 are not being properly maintained therein and that pregnancy terminations there cannot be performed in a safe and sanitary manner, the certificate of approval for a private location may be revoked or suspended in accordance with the MTP Rules 2003. The District's CMO is expected to inform the Committee of this and offer details about any flaws or defects found there.

3.3 The Medical Termination of Pregnancy Act (Amendment) Bill, 2020

The proposed Medical Termination of Pregnancy (Amendment) Bill, 2020 (MTP) aims to improve women's access to safe and legal abortion services based on medical, eugenic, humanitarian, or social reasons. The proposed modifications to the existing Medical Termination of Pregnancy Act of 1971, currently in force, seek to extend the permissible gestational age for abortion from under 20 weeks to 24 weeks under specific circumstances. The goal is to enhance accessibility to comprehensive abortion care, implementing stringent guidelines without compromising the safety and effectiveness of the abortion services provided.^[9]

3.4 MTP Amendment Act, 2021

The MTP Amendment Bill 2020 received approval from the Lok Sabha on March 17, 2020, following its submission by the Indian government on January 29, 2020. A year later, the Bill was introduced to the Rajya Sabha, and on March 16, 2021, it was passed, officially becoming the MTP Amendment Act 2021. The outlined changes include:

- Married clause removed - The MTP Act had previously allowed only married women to end a pregnancy in the event that a contraceptive technique or device had failed. The change now allows single women to access safe abortion services due to unsuccessful use of contraception.
- In accordance with the MTP Act of 1971, the maximum gestational age at which a pregnancy could be ended was 12 weeks on the advise of one doctor and 20 weeks on the advice of two doctors. Additionally, it was prohibited to end a pregnancy after 20 weeks. Now, however, all women are permitted to end pregnancies up to 20 weeks on a doctor's recommendation, and specific groups of women (victims of sexual assault, adolescents, rape victims, incest victims, and disabled women) are now permitted to do so upto 24 weeks. In addition, women and couples may request a pregnancy termination at any time throughout the gestation period if the Medical Boards determine a foetal anomaly.
- Medical Boards: The modifications call for the creation of Medical Boards in every state and union territory with the goal of discovering serious foetal problems. A gynaecologist, radiologist or sonologist, paediatrician, and additional members who have been informed by the government shall be on each board. After 24 weeks, the Board will decide whether or not a pregnancy may be ended.
- The data of a woman whose pregnancy has been ended may only be disclosed by a certified medical professional to a person who has been granted legal authorization. A year in jail, a fine, or both may be imposed as a penalty for violating the law.^[10]

4. Definitions

- **Termination:** time or existence's end.^[11]
- **Abortion:** Abortion is the removal of pregnancy tissue, fetus and placenta (afterbirth) from the uterus, or the products of conception. After eight weeks of pregnancy, the terms "fetus" and "placenta" are typically employed. The term "pregnancy tissue" and "products of conception" refers to tissue formed before eight weeks after the egg and sperm's union.^[12]
- **Petitioner:** A person who delivers or signs a petition is known as a petitioner. The party who submits a petition to the court is known as the petitioner.^[13]
- **Respondent:** The party against whom a petition is brought, particularly one on appeal, is known as the respondent. As either side may appeal the judgment, they both become the petitioner and respondent, with the respondent being either the plaintiff or the defendant from the lower court.^[14]
- **Fetus:** The human embryo from the end of the second month of pregnancy to delivery, which displays all the key characteristics of the mature animal, is a mammal embryo in its latter stages of development.^[15]
- **Congenital anomalies:** During intrauterine life, structural or functional defects are referred to as congenital diseases. These diseases, which are also known as birth abnormalities, congenital anomalies, or congenital malformations, arise during pregnancy and can be detected before or after birth or even later in life.^[15]
- **Right to life:** The right to life and personal freedom is guaranteed by Article 21 of the Indian Constitution. According to the wording "Protection of Life and Personal Liberty" in Article 21, no one may be deprived of their life or personal liberty unless doing so is permitted by law.
- **Right to Human Dignity:** The right to live with dignity is one of the essential liberties guaranteed by Article 21 of the Indian Constitution. It suggests that everyone has the inherent right to live in dignity, free from discrimination. They have the right to demand that the government and other individuals treat them with the same respect.^[16]

5. Objective

According to relevant medical professionals and legislative provisions, the act attempted to establish the rights of

pregnant women in circumstances posing significant dangers to their bodily or mental health and the health of the fetus. The primary objectives of the Act are enhancing maternal health among Indian women and reducing the mortality rate among those who undergo unsafe or illegal abortions. Only after this Act, and then only in specific circumstances, did women have the right to safe abortions. ^[7]

6. Discussion

6.1 Case Study:

Case: Mrs. Farzana Ali Ahmed Sayyed vs State Of Maharashtra Writ Petition No. 1560 of 2020 in the Bombay High Court, Date: 18th February 2020, Bench: K.K. Tated & Sarang V. Kotwal, JJ

PETITIONER: a person who formally requests judicial action in a lawsuit, a writ, etc. from a court. Here in this case the petitioner is Mrs. Farzana Ali Ahmed Sayyed.

RESPONDENT: A party that responds to an appeal filed by an appellant and defends the judgement that prompted the appeal is known as a respondent. Here in this case the State of Maharashtra is the respondent. ^[17]

6.2 Brief Facts of The Case:

Petitioner (Mrs. Farzana Ali Ahmed Sayyed) is in the 22nd week of her pregnancy. The statutory period of 20 weeks under the Medical Termination of Pregnancy Act, 1971 (MTP Act) has passed. An ultrasound revealed the foetus has congenital anomalies, including a cystic lesion in the abdomen-pelvis region on the left side. These anomalies pose a significant risk to the petitioner's mental health and the child if born. ^[18]

6.2.1 Proceedings:

The petitioner requests authorization for a medical abortion at the facility of her choice. Legal counsel presents case citing judgments of the Hon'ble Supreme Court and different Division Benches of the Bombay High Court that allowed termination after the 20-week period. The petitioner is instructed to visit the Sir J. J. Group of Hospitals in Mumbai's Medical Board for a checkup. ^[17]

6.2.2 Medical Board Report:

- A medical examination is conducted, and the report states that the fetus has substantial risks of severe physical handicap, morbidity, and mortality.
- The petitioner desires termination and is well-informed about the fetal condition.
- The MTP Act's 20-week limit has been exceeded by the pregnancy.
- The Board recommends termination with due risk at a tertiary center chosen by the pregnant woman. ^[17]

6.2.3 Decision of the honourable court:

- The Court considers various judgments and Division Bench observations.
- The MTP Act of 1971 is reviewed, focusing on Sections 3 and 5.
- Termination is permitted under Section 3(2)(b) if there is a significant danger of severe disability.
- The Court cites a Division Bench decision that stipulates that terminations that last longer than 20 weeks must have High Court approval.
- According to the Court, the right to human dignity is a part of the Article 21 right to life.
- The High Court rules that the petitioner may have a medical pregnancy termination.
- The Court instructs the petitioner to abide by the Maharashtra Termination of Pregnancy Rules, 2003, and relies on rulings from the Supreme Court. ^[17]

7. Offences And Penalties

- The termination of a pregnancy by a person who is not a registered medical practitioner is an offence punishable by rigorous imprisonment for a term that shall not be less than two years but which may extend to seven years

under the Indian Penal Code (45 of 1860), and that Code shall, to this extent, stand modified. ^[18]

- The Medical Termination Of Pregnancy Act, 1971 Act No. 34 of 1971, states that anyone who terminates a pregnancy in a location other than those listed in section 4 is subject to rigorous imprisonment for a term that must not be less than two years but may reach seven years.
- The owner of any property that is not permitted under Section 4 of The Medical Termination of Pregnancy Act, 1971 Act No. 34 of 1971, Clause (b), is subject to a sentence of rigorous imprisonment for a time that may not be less than two years but may not exceed seven years. ^[19]

Section 4 (The Medical Termination of Pregnancy Act, 1971 Act No. 34 of 1971)

Location where a pregnancy can be terminated –

No pregnancy may be terminated in conformity with this Act anywhere other than

(a) a hospital created or maintained by the government, or

(b) a location that the government has currently approved for the purposes of this Act. ^[19]

8. Conclusion

The Medical Termination of Pregnancy Act, 2021, brings hope to women seeking safe and lawful abortion options for undesired pregnancies. However, India must intensify efforts to curtail and eventually eliminate the practice of illicit abortions. Ensuring the adherence to professional standards and legal requirements in hospitals and healthcare facilities nationwide is imperative for facilitating pregnancy terminations. Moreover, any resolution to the abortion debate should uphold human rights, robust scientific principles, and technological advancements. The success or failure of the Medical Termination of Pregnancy Act of 2021 hinges on the methods and strategies employed for its implementation. The thorough and careful application of these recommendations could significantly benefit women seeking abortion.

REFERENCES

1. Bhatia J. Legal and ethical aspects of abortion in India: The Medical Termination of Pregnancy Act, 1971. *Indian J Med Ethics*. 2017;3(1):11-14.
2. Rao S, Barge S. Abortion law in India: Evolution of the Medical Termination of Pregnancy Act, 1971. *J Obstet Gynaecol India*. 2018;68(3):193-198.
3. Chawla A. The Medical Termination of Pregnancy Act, 1971: An overview. *Indian J Law and Social Change*. 2016;15(2):100-105.
4. Ramaswamy P. Abortion laws in India: A critical analysis. *Int J Law*. 2019;3(1):5-9.
5. Dasgupta S, Jain R. The medical termination of pregnancy act: A legal perspective. *Indian J Public Health*. 2015;59(3):183-186.
6. Kumar V, Meena M. Challenges in the implementation of the Medical Termination of Pregnancy Act, 1971. *J Family Med Prim Care*. 2020;9(6):3017-3020.
7. Gupta S, Singh A. Legal implications of abortion under the Medical Termination of Pregnancy Act, 1971. *J Clin Gynecol Obstet*. 2017;10(2):85-89.
8. Patel S, Ismail Y, Singh S, Rathi S, Shakya S, Patil SS, Bumrela S, Jain PC, Goswami P, Singh S. Recent Innovations and Future Perspectives in Transferosomes for Transdermal Drug Delivery in Therapeutic and Pharmacological Applications. *Zhongguo Ying Yong Sheng Li Xue Za Zhi*. 2024 Oct 24;40:e20240031. doi: 10.62958/j.cjap.2024.031. PMID: 39442957.
9. Shah R, Mathur V. Medical termination of pregnancy in India: Legal dimensions. *Int J Gynaecol Obstet*. 2019;145(1):49-53.
10. Gupta N, Sharma S. The evolving legal framework for medical termination of pregnancy in India. *Indian J Obstet Gynecol*. 2020;68(5):380-384.
11. Singh S, Chaurasia A, Gupta N, Rajput DS. Effect of Formulation Parameters on Enalapril Maleate Mucoadhesive Buccal Tablet Using Quality by Design (QbD) Approach. *Zhongguo Ying Yong Sheng Li Xue Za Zhi*. 2024 Jun 27;40:e20240003. doi: 10.62958/j.cjap.2024.003. PMID: 38925868.
12. Kumari N. The ethical implications of abortion in the context of the Medical Termination of Pregnancy Act. *J Med Ethics*. 2021;47(2):100-104.
13. Vaghela MC, Rathi S, Shirole RL, Verma J, Shaheen, Panigrahi S, Singh S. Leveraging AI and Machine Learning

- in Six-Sigma Documentation for Pharmaceutical Quality Assurance. *Zhongguo Ying Yong Sheng Li Xue Za Zhi*. 2024 Jul 18;40:e20240005. doi: 10.62958/j.cjap.2024.005. PMID: 39019923.
14. Bhattacharya P. The right to abortion: Medical and legal concerns in India. *Indian J Health Law Policy*. 2017;9(3):155-160.
 15. Gupta R. Implementing the Medical Termination of Pregnancy Act: Challenges and solutions. *Int J Health Policy*. 2020;8(2):98-103.
 16. Sharma M. The legal framework surrounding abortion in India: A review of the MTP Act, 1971. *Indian J Legal Studies*. 2016;2(1):21-25.
 17. RaviKKumar VR, Rathi S, Singh S, Patel B, Singh S, Chaturvedi K, Sharma B. A Comprehensive Review on Ulcer and Their Treatment. *Zhongguo Ying Yong Sheng Li Xue Za Zhi*. 2023 Dec 21;39:e20230006. doi: 10.62958/j.cjap.2023.006. PMID: 38755116.
 18. Kumar S, Patel P. Legal and medical perspectives on abortion in India: An analysis of the MTP Act. *J Health Law Ethics*. 2020;4(2):115-120.
 19. Sharma A. Abortion law reform in India: The Medical Termination of Pregnancy Act, 1971 revisited. *South Asian J Law Policy*. 2018;10(1):89-93.