

Analysing the need to Further reform the (Indian) Medical Termination of Pregnancy (Amendment) Act, 2021.

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History

The Medical Termination of Pregnancy Act is India's primary legislation governing the legality of the termination of certain pregnancies - it specifies the conditions under which a registered medical practitioner may lawfully terminate the pregnancy, as well as the procedural requirements attached. Under the initial act in 1971, terminating a pregnancy as a person who is not a registered medical practitioner was a punishable offence. Additionally, the termination of pregnancy was only legally permitted under the condition that the pregnancy had not lasted more than 12 weeks under the guidance of one medical practitioner.

With the opinion of 2 medical practitioners the termination of the pregnancy could occur until the fetus was 20 weeks old. If the woman carrying the fetus was susceptible to physical harm, the gestation period was permitted to be elongated. Furthermore, the termination of pregnancy was legal only on the grounds that the fetus was a product of rape, failure of contraception as a married woman, being a minor or being a 'lunatic' - the Indian Lunacy Act describes this as 'an idiot or a person of unsound mind' under section sub-section 5.

In 2021, Dr. Harsh Vardhan from the Bharatiya Janata Party suggested an amendment to the MTP, 1971 (*The Medical Termination of Pregnancy (Amendment) Bill, 2020*, n.d.). This amendment increased the legally permitted gestation period with the opinion of 1 medical practitioner from 12 weeks to 20 weeks. It also did the same where the gestation period with the opinion of two doctors increased from 20 weeks to 24 weeks. The amendment also authorised the termination of pregnancy for unmarried women who experienced a malfunction with the contraceptive used during sexual intercourse. The amendment additionally called for a medical board consisting of a gynaecologist, radiologist and paediatrician to evaluate terminations for foetal abnormalities beyond 24 weeks. Lastly, the medical practitioner cannot disclose the identity of the woman seeking to terminate her pregnancy and the usage of 'lunatic' as a description for the person was updated to 'mentally ill'.

In 2021, the termination of pregnancy was still legally permitted only for special categories - survivors of rape or incest, women with disabilities, minors, women experiencing change in marital status, contraception malfunctions and women with fetal anomaly.

I. Introduction

In 2022 during *X v. Principal Secretary, Delhi*, the SC ruled that unmarried women are equally eligible for abortions up to 24 weeks - this ended a long-standing legal fight on how unmarried women were being discriminated against. Moreover, the Supreme Court questioned why terminating a fetus after 24 weeks is only legal if it is a fetal abnormality. It questioned why minors, victims of rape and victims of incest aren't provided with the same legal protection and right.

While it is apparent that steps have been made to reform the MTP act to better suit the norms of today's society, there are many changes that are yet to happen. The reality is that abortion can be

seen as a taboo topic in India. India is rife with resistance to accepting the normality of pre-marital sex, the judgement and ostracisation of individuals who want an abortion (Deka, n.d.) Additionally medical practitioners may be unwilling to carry out the procedure on the basis of cultural values instead of medical reasoning.

Social tapestries may not be able to change swiftly; but the law certainly can and should. Therefore my thesis is: it is certainly necessary to further reform the MTP Act 2021; the Act still criminalises abortion, is ambiguous in many clauses and is doctor-centric rather than rights centric.

The Need to Reform the Criminalisation of Medical Termination of Pregnancy

Positive Rights

The medical termination of pregnancy - rather abortion - is technically a conditional legal exception rather than a positive right since our own criminal laws i.e. the BNS treat abortion as a criminal offence unless permitted under the MTP act. This means it is illegal for a person to abort a fetus in any circumstance that does not conform to the specified special cases. The MTP Act creates a provision for criminal liability rather than providing a positive right to abortion. While abortion is certainly a widely contested concept, there are many arguments for legalising abortion in all contexts - provided that the gestational period does not extend post the 24th week.

One being that providing a woman with the positive right to abortion is a clear link to Article 21 from India's constitution - the right to protection of life and personal liberty. Not allowing a woman bodily autonomy is certainly deprivation of their personal liberty - individuals should be given the choice legally and judicially before venturing into social and economic constraints.

Doctor Centred Act

The MTP is structured in a manner that places importance on the protection of the Medical Practitioner instead of the individual who has decided to terminate her pregnancy. The Act requires a Registered

Medical Practitioner's opinion at every stage which not only undermines the wants of the woman but it also acts as a gatekeeping feature.

A pregnant person cannot get an abortion simply by choice; they must legally convince one or more doctors that they fit specific statutory conditions - the patient being a minor, the patient being mentally ill etc. This means the decision is based on the 'good faith' of a medical practitioner. Since the legal liability is solely on the doctor - doctors are less likely to perform abortions in fear of being prosecuted under strict statutory boundaries which can lead to the wants of many individuals being denied. Again a contradiction to Article 21 of the Indian Constitution.

Additionally after 24 weeks the decision is stripped away from both the patient and her primary doctor, handing it over to a multi-member, state-level board. This leads to long bureaucratic waiting periods, red tape and delays in evaluations which can be detrimental to an individual's health.

POCSO Discrepancy

Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO) specifies that a child is any person under the age of eighteen.

Section 3 of POCSO defines sexual assault as the penetration of a child's mouth, urethra, vagina, or anus. Therefore, having sex under the age of 18 is illegal under POCSO, consensual or not.

This creates a significant tension with the Medical Termination of Pregnancy Act, 1971 (MTP Act). If a minor wants to abort a pregnancy it may simultaneously constitute an offence under POCSO. Section 19(1) of POCSO requires knowledge or apprehension of such an offence to be reported to the police, while Section 5A of the MTP Act protects the confidentiality of the person undergoing the procedure. Therefore, a medical practitioner treating a minor may be compromised when having to balance the obligation to report a POCSO offence against the child's right to confidentiality and access to safe reproductive healthcare. In this case either the confidentiality of the patient is breached or the obligation to justice is breached.

Counter-Arguments and Rebuttals

However it can be argued that the MTP doesn't need absolute reform since it takes into account different aspects. One being that the gestational period is necessary and scientifically grounded. As the fetus develops, abortions tend to have more physical risks associated with late term terminations. In *Suchita Srivastava & Anr vs Chandigarh Administration* on 28 August, 2009 the court itself noted that the late term abortion could endanger the health of the woman. This suggests that gestational thresholds serve a protective function.

Additionally, the safety of the person is upheld through the implementation of a Medical Board during the decision of late term termination of pregnancy. Medical practitioners are licensed and almost always have more expertise than their patients. Given the complexity and risk associated with late-term abortions, a multi-disciplinary board that comprises of a gynaecologist, paediatrician and radiologist - as mandated by the MTP rules 2022 in Section 3C - ensures decisions are made on medical grounds. This protects the person from both health risks and potential coercion.

Proposed Reforms

While the MTP Act 1971 and its subsequent amendments represent legislative progress, the gaps argued above display that the current framework is still lacking. The following reforms are therefore proposed:

The MTP act should be amended further wherein terminating a pregnancy is not a criminal offence in any context up till the gestation period of 24 weeks. Individuals should be eligible for an abortion up to 24 weeks even if they aren't classified under the 'special cases' of the MTP Act. The rest follows the same amendment where if there is a biological issue, the gestation period can be upward of 24 weeks. This legislatively provides a positive right to individuals around the country to have the option of abortion without being penalised for having bodily autonomy.

Additionally, the MTP act should be amended to remove gestational limits for survivors of rape, incest and minor cases. The current framework creates a perverse distinction - termination beyond 24 weeks is permitted for fetal abnormalities but not for child rape survivors. The legislation claims that fetal abnormalities are more grave than sexual assault. This distinction was noted by the Supreme Court during *(Mother of X) v. State of Maharashtra (2024) INSC 371* where the court expressed its concern in the inflexibility of this act when it comes to minor survivors.

Therefore the gestational period should be eliminated for survivors of rape, incest and minor cases due to the severity of the situation.

Finally, POCSO needs to be amended in order to resolve the POCSO-MTP conflict. POCSO should be amended to introduce an exception to its mandatory reporting obligation under Section 19. It should exempt Medical Practitioners from disclosing the identity of the minor seeking the termination of her pregnancy. In this case, Medical Practitioners are not exposed to criminal liability for non disclosure which may result in more access for minors. Minors may feel more confident to seek safe abortions due to the new sense of anonymity.

II. Conclusion

To conclude, while the MTP act has made astounding progress through extending gestational periods, including contraception failure to unmarried women in the 'special cases' and introducing confidentiality protections - the Act is still not completely structurally sound.

Introducing reforms to combat the POCSO discrepancy, the importance of doctors over patients and the provision for criminal liability over creating a positive right are necessary to make India's reproductive rights more progressive.

Bibliography

- [1]. Suchita Srivastava & Anr vs Chandigarh Administration on 28 August, 2009
- [2]. The Medical Termination of Pregnancy Act, 1971 | India Code
- [3]. Medical Termination of Pregnancy (MTP) Amendment Act, 2021
- [4]. Abortion Law in India
- [5]. Safe abortion is legal - but still inaccessible - for young people in India