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## Medical termination of pregnancy act, 1971 and a critical review of various amendments

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### Abstract

Abortion was illegal in India under the IPC, and only women were to blame for the crime. A first step toward legalising abortion is the Medical Termination of Pregnancy Act of 1971. By facilitating legal abortions performed by skilled professionals, the primary goal is to reduce deaths and injuries caused by unsafe abortions. As soon as pregnancy is detected, a medical abortion can be performed by taking medicine. The Lok Sabha has received a measure that would raise the age restriction for mother-fetal termination (MTP) from 20 to 24 weeks. The greatest amount of time that should pass before a pregnancy should not be terminated is not specified by the World Health Organization. The MTP Bill, 2018 proposed raising the maximum sentence for rape victims to 27 weeks. The 2021 amendment act extended the window to 24 weeks and prioritised the safety of the mother's life over the rights of the unborn child.

**Keywords:** MTP act, pregnant woman, district level, medical abortion, time limit, medical board

### Introduction

Up until the 1960s, it was against the law for women to have abortions, and under S 312 IPC, they may be sentenced to three years in prison or fined. The Central Family Planning Board established a committee under the direction of Shri Shanthi Lal Shah, the then-health minister of Maharashtra, to study the provisions for legalising abortion due to an increase in the number of illegal abortions performed by untrained individuals in unsanitary settings, endangering the lives and health of the women. The committee's recommendations led to the passage of the Medical Termination of Pregnancy Act in 1972. "A total of 48242 terminations have been performed from 1<sup>st</sup> April, 1972 to 30<sup>th</sup> Nov 1973 <sup>[1]</sup>."

The Medical Termination of Pregnancy Act covers matters related to the termination of some pregnancies by licenced medical professionals. To implement the provisions of this Act, the Central Government makes Regulations and the States enact Regulations. The term "Registered medical practitioner" as used in this act refers to a person who has any recognised medical degree, has registered with a state medical registry, and has expertise and training in obstetrics and gynaecology.

### Circumstances of doing MTP

If the pregnancy is less than 12 weeks old, a qualified medical professional may terminate the pregnancy. And if the pregnancy is between 12 and 20 weeks, it may be ended if at least two doctors agree in good faith that: a) the mother-to-be will suffer physical or mental harm or risk her life if the pregnancy is not terminated; examples include rape, the failure of a contraceptive device, etc.; and b) there is a chance she will give birth to a child who is physically or mentally disabled.

For women under the age of 18 or those who are mentally ill, the guardian's consent is required before a pregnancy can be ended. No pregnancy may be ended without the expectant mother's agreement.

### Place to perform MTP

Not at any location other government hospitals or those that the government has temporarily allowed.

### Exceptions to when and where

No pregnancy duration, no second doctor's recommendation, and no approved facility shall be considered when deciding whether to end a pregnancy if doing so is necessary to preserve the life of the expectant mother.

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**Punishment**

IPC 45 of 1860 states that performing an MTP by a non-registered medical professional or in an unregistered location will result in a 2-7 year sentence of hard labour.

**Protection**

Anyone who practises MTP in good faith and in accordance with the terms of this Act is not subject to legal action or other legal recourse.

**MTP rules framed in 1975**

Using the authority granted by the MTP Act of 1971, the central government created the following regulations. The phrases District CMO, Form, Owner of the place, and Place are defined in this. The conditions, locations where MTP can be performed, and doctor experience and training are all described.

**Experience and training for MTP**

A licenced doctor should possess at least one of the following qualifications or training in gynaecology and obstetrics:

- 1) For doctors who registered prior to the start of the Act, experience in OGB practise for a minimum of three years.
- 2) Doctors who registered on or after the Act's start date
  - a) A year of experience working in a hospital performing OBG surgery, or b) six months of house surgeon training in OBG
  - b) Performed at least 5 cases on my own while assisting with 25 MTP cases in a hospital with a licence.
  - c) A postgraduate certificate or degree in OBG

**Places to perform MTP**

Only establishments that operate in a safe and hygienic environment are granted a license. An approved location must have the necessary amenities, including an operating table and instruments, anaesthesia, resuscitative, and sterilization equipment, drug, and parental fluid supplies.

**Inspection of the place**

The CMO shall conduct inspections as frequently as required to determine whether MTP is being performed in a safe and hygienic environment. After completing inspection, the CMO may suspend or revoke the approval if any flaws or deficiencies are discovered.

**MTP regulations, 1975****Forms of certifying opinion**

Within three hours of the pregnancy's termination, a registered medical professional must certify their opinion for MTP on Form I.

**Envelope**

The practitioner must seal an envelope holding the pregnant woman's consent to end the pregnancy, the certified opinion, and the notification of MTP before sending it to the hospital administrator, the proprietor of the authorized location, or the state's CMO. Envelope must be stamped "SECRET" and contain the pregnant woman's admission registration serial number, date, and name of the registered practitioner. The owner or head of the hospital is required to send a monthly statement in FORM II to the CMO of the state. Every hospital head or owner for MTP is required to keep an

admission register in FORM III that is kept for 5 years. The woman's name must not be recorded anywhere else in the register than the serial number. Except for the Chief Secretary to the Government, First Class Magistrate, and District Judge conducting departmental inquiries, the admission registry is not to be accessible to the public.

**MTP amendment act, 2002**

"The amendment is aiming at decentralisation of authority for approval and registration of MTP Centres from the State to district level." [2]. The phrase "mentally ill individual" stands in place of the word "lunatic." A person who requires treatment for a mental disease other than mental retardation is referred to as being mentally ill.

**District level committee**

A District level committee was formed such that 1 member shall be Gynaecologist/Surgeon/Anaesthetist and other members from the local medical profession, NGOs, Panchayati Raj. One of the members will be a woman. For first trimester abortions, you'll need a gynecology exam/lab table, resuscitation/sterilization equipment, medications, parental fluids, backup facilities for treating shock, and transportation options. For second trimester abortions, you'll need the following: a) an operating table and MTP tools b) anesthesia equipment, resuscitation equipment, and sterilizing equipment c) emergency medications and parental fluids. By submitting an application to the District's Chief Medical Officer, who then notifies the Committee, the property owner must gain clearance for the location. The place must show the certificate of approval.

**MTP amendment bill, 2014**

Despite widespread awareness of MTP, the increased rate of unsafe and illegal abortions is mostly due to a lack of access to MTP at the primary healthcare level. The act prohibits the termination of a pregnancy after 20 weeks of gestation, with the exception of situations in which a woman's life is in immediate danger. "India's arbitrary 20 week cut off compels women to make ill informed decisions." [3]. When a definitive diagnosis is confirmed following USS at the 18th week of gestation, the pregnancy must be farther along than 20 weeks. After these 20 weeks, women in India may decide to have an illegal abortion, which could raise the maternal death rate. Ample training and technological resources are still not being used. As soon as pregnancy is detected, a medical abortion can be performed by taking medicine. It is risk-free and safe to do with the right supervision and counseling. Both surgery and infrastructure are not needed. Due to the lack of awareness of the availability and methods of medical abortion among the rural and urban population in India, surgical abortions continue to be the most popular method used. "Unsafe abortions make a significant contribution to maternal morbidity and mortality." [4]. This amendment bill proposes using AYUSH practitioners to deliver appropriate healthcare and support medical abortion after receiving the necessary training from the government. "With the objective to improve access to safe abortion services, the Ministry of Health and Family Welfare with approval of the Law Ministry, published draft amendments of the MTP Act on Oct 29, 2014." [5].

**The proposals for amendment are as follows.**

- 1) According to the Indian Medical Council Act, a

- registered health care provider is a doctor who holds any recognized medical qualification. It also includes practitioners of the Ayurvedic, Siddha, Unani, and homoeopathic medical systems who are listed in the relevant Central and State medical registers. A nurse or auxiliary midwife was another significant suggestion made in accordance with the Indian Nursing Council Act.
- 2) To end a pregnancy with the use of medicine or surgery.
  - 3) The term registered health care provider shall be used in place of the term registered medical practitioner.
  - 4) A pregnancy may be terminated up to 24 weeks of gestation if: a) the mother's physical or mental health is gravely harmed by the continuation of such pregnancies, such as through rape or the failure of any form of contraception; or b) there is a significant chance that the child will be born with serious physical or mental abnormalities.
  - 5) The number of weeks pregnant a woman was when she was terminated did not matter when a fetal defect was discovered.
  - 6) In situations where a pregnant woman's life is in danger, the length of the pregnancy is irrelevant.

The proposed 2104 amendment bill, which would have allowed Ayurvedic and Homoeopathic practitioners and Nurses to conduct MTP, was fiercely opposed by the Indian Medical Association on the grounds that it would endanger the lives of expectant mothers and was completely unprepared to deal with any serious medical complications that might arise. The bill's immediate withdrawal was urged by IMA. They approved of the idea to raise the minimum age to 24 weeks. "Studies from India suggest an interest from alternative providers to be trained in MTP and to be allowed to provide early abortions." [6]. Before permitting providers to offer medical abortion services, the government should take the initiative to provide adequate and top-notch training. A lady choosing a quack provider in a rural and risking her life is more likely to increase the safety and efficacy of the MTP procedure than a professional medical abortion provider. India has to abandon the antiquated procedure known as "dilatation and curettage" and switch to more contemporary, risk-free abortion techniques like medical abortion and vacuum aspiration. "These methods can be easily be implemented at a primary health care level, provided by alternate providers and hence increase access to safe abortion services." [7].

### 2018 amendment bill

Mr. Shirang Appa Barne submitted this, arguing that it is past due for the parent Act to be changed in light of the socioeconomic changes and the development of new medical technologies. The plan was to raise the age restriction for MTP if it results in the mother's mental or bodily harm at any point during pregnancy, as well as to raise the age restriction for rape survivors.

Important features of the bill are as follows

- 1) The time limit of 20 weeks will be increased to 24 weeks.
- 2) "Before 27 weeks" shall be substituted for "at any time" in the case of a rape survivor.
- 3) MTP may only be administered in a government hospital, medical school, or other facility under

government maintenance.

- 4) A Central Supervisory Board made up of renowned geneticists, gynecologists and obstetricians, pediatricians, social scientists, and representatives of organizations that support women would be established.
- 5) Pregnancy must be terminated regardless of how long it lasts if the unborn child has any of the following abnormalities: chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathies, sex-linked genetic diseases, congenital abnormalities, or those specified by the Board.

### MTP amendment act, 2021

There is no upper time restriction set by the World Health Organization beyond which a pregnancy should not be terminated. "With the passage of time and advancement of medical technology (USG, CT Scan, MRI, ETC.) for safe abortion, there is a scope for increasing upper gestational limit for terminating pregnancies especially for vulnerable women and for pregnancies with substantial foetal anomalies detected late in pregnancy" [6]. The 2021 Amendment Act increased the window to 24 weeks and prioritized the safety of the mother's life over the rights of the unborn child. The protection of the unborn child's life is one of the frequent justifications in India for restricting the right to an abortion. "Almost in all International Human Rights Law, Right to Life is protected after the birth and this is only because to protect the women's rights to abortion, if the right to life before birth gets protected." [8] "In current MTP Bill of 2020 – one can see the discrimination for increasing the upper age limit for termination of rape victim and for fetal abnormalities." [9] Give unmarried women the option to choose abortion as well. "The MTP Bill, 2018 suggested to increase the upper limit for rape victim up to 27 weeks. But current bill of 2020 has reduced the upper age limit for rape victim up to 24 weeks like that of MTP Bill of 2014." [9] "The amendments will increase the ambit and access of women to safe abortion services and will ensure dignity, autonomy; confidentiality and justice for women who need to terminate pregnancy." [10].

### Important amendments are as follows

- 1) For MTP up to 20 weeks, only one doctor's opinion should be sought.
- 2) Two doctors' opinions should be sought before 20 to 24 weeks
- 3) Increase the maximum gestational age to 24 weeks
- 4) If a medical board diagnosis any of the significant fetal defects, no age restriction should be taken into account.
- 5) Every State Government must establish a Medical Board for the purposes of this Act. Gynecologists, pediatricians, radiologists, and other medical professionals will make up the Medical Board.
- 6) The phrase "any married pregnant woman" is changed to "any woman," with the term "married" omitted, to include pregnancies that happen outside of marriage or civil union, as well as those that result from sexual assault and live-in relationships.
- 7) A new word has been added: "preventing pregnancy."
- 8) "Her partner" has been used in place of "her husband."
- 9) The woman's spouse is now included in the grounds for a contraceptive's failure.
- 10) Section 5 A is added, which states that no registered medical practitioner may disclose a woman's identity or

other information about her other than to a person authorized by law. Violators of this provision face a year in prison and/or a fine.

### Summary and Conclusions

Abortion was illegal in India under the IPC, and only women were to blame for the crime. According to section 312 of the Indian Penal Code, it is illegal to intentionally cause a miscarriage, even with the women's agreement, unless it is necessary to save the woman's life. Anyone who performs an abortion, including the lady herself or a medical professional, may face charges. The Medical Termination of Pregnancy Act of 1971 opened a new path to legalizing abortion, protecting women's reproductive rights, their sense of empowerment, and the rights of licensed medical professionals. The primary goal is to prevent deaths and injuries from unsafe abortions by having trained professionals perform legal abortions. The many revisions demonstrated a strong legal foundation in India that incorporates various facets of a pregnant woman's safety and reproductive rights. A recent amendment expanded the maximum gestational age for abortion from 20 to 24 weeks, which will lower the likelihood that a child may be delivered with fetal abnormalities. The most recent amendment act did not include the 2014 amendment draft bill's recommendation to use AYUSH practitioners to perform abortions. Any fetal anomalies will be diagnosed by the Medical Board, but delays in the board's decision-making could be dangerous because the highest limit is set at 24 weeks. Additionally, the 2021 Act makes no reference to transgender pregnant women who need abortion services. The Medical Termination Act, together with its several revisions, aims to increase women's access to safe and legal abortion services for medical, eugenic, humanitarian, or social reasons.

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