



MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021 ADDRESS WOMEN ISSUES MORE FIERCELY: AN OVERVIEW

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ABSTRACT

The Medical Termination of Pregnancy (Amendment) Act, 2021 marks a momentous fruition in India's reproductive rights framework by broadening access to safe and legal abortion amenities. This paper critically analyses the key provisions of both the original MTP Act of 1971 and its 2021 amendment highlighting how the latter enhances women's autonomy, confidentiality and healthcare access in the domain of reproductive decision-making. The amended law extends the gestational limit for termination from 20 to 24 weeks for specific categories such as survivors of rape, minors, differently-abled women and cases of substantial fetal abnormalities. The Act also recognizes contraceptive failure in both married and unmarried women as a valid ground for termination, thus ensuring equality and addressing social realities. Additionally, the establishment of medical boards for cases beyond 24 weeks introduces a structured review mechanism although it still mandates judicial intervention in some late-stage terminations. The paper also reviews landmark Supreme Court judgments that have molded abortion rights in India, including XYZ v. Union of India (2017) and Ms. X v. Union of India (2022), emphasizing judicial provision for fleshly autonomy and reproductive justice. Despite these progressive reforms, gaps remain in implementation, awareness and timely medical access, especially in rural areas. The paper suggests that further reforms and sensitization are necessary to align the law with a rights-based and healthcare-centric approach. Overall, the 2021 amendment is a vital step toward fulfilling India's commitment to gender equality, maternal health and human rights.

KEYWORDS : Medical Termination of Pregnancy, MTP Act 2021, Abortion law in India, Safe abortion, Supreme Court judgments, Medical Board, Forensic

INTRODUCTION

According to the Oxford Dictionaries, termination means "the deliberate termination of a person's pregnancy, which usually occurs within the first 28 weeks."¹

Women's reproductive' rights in general, and abortion in particular, have been the subject of intense debate globally. Even in countries where the law permits abortions women battle stigma, bias lack of awareness and information, all of which result in restriction of access to safe abortion.²

After pregnancy is detected, miscarriage up to 24 weeks is often referred to as 'spontaneous abortion' or 'abortion'; from 24 weeks to full time, it can be termed 'premature birth'.³ In India, abortion is permitted in limited circumstances since the adoption of the Termination of Pregnancy (MTP) Act 1971, which created an exception in the case of abortion under the Indian Penal Code, 1860 The main purpose of this law was human control and family planning³ and does not have a rights-based framework.⁴

The primary objective of the Medical Termination of Pregnancy (MTP) Act 1971 was to enhance maternal health by ensuring the provision of safe abortion services for women. This act not only offered protection to medical practitioners but also decriminalized individuals seeking abortion. Complications arising from both spontaneous and induced abortions are significant health concerns and contribute significantly to maternal morbidity and mortality.⁵

On March 17, the lower house (Lok Sabha) of the Indian Parliament passed the MTP 2020 Amendment Bill, a new set of amendments to the nearly 50-year-old law. Sadly, the Bill failed to comply with the current Supreme Court of India's reproductive rights law⁶ and its fundamental rights to

independence, physical integrity and privacy.⁷

We examine the various sections of the MTP Amendment Act, 2021(hereinafter, MTP Act, 2021) and show how it will strengthen the rights of women, and will inevitably improve the practice of obstetrics, ultrasonography and foetal medicine. We also suggest further changes that would improve it from the human rights perspective.

Objectives Of Medical Termination Of Pregnancy Act, 1971

The preamble of the Medical Termination of Pregnancy Act, 1971 read as follows- An act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.⁸ Preamble clearly indicates the objective of the MTP act. That only certain pregnancy will be allowed to terminate under MTP Act by the registered medical practitioners. Also, the main objective of the act is to improve the maternal health of Indian women and to control the mortality rate of the women due to unsafe and illegal abortion. It was only after this act the safe abortion was available to women but that too under certain condition which will be discussed below.⁹

Circumstances For Termination Of Pregnancy

The following are the circumstances in which a woman can terminate her pregnancy under section 3 of the said Act-

- Where there is a risk to the pregnant woman's health or severe physical or mental injury if the pregnancy continues.
- If there is a high risk that when a baby is born, it can suffer physically and mentally as a serious disability.
- If a pregnant woman is suspected of being pregnant it is the result of the rape.
- If the pregnancy occurs as a result of the failure of any device or method used by any married woman or her

husband for the purpose of reducing the number of children.

- If the gestation period does not exceed 12 weeks.
- If the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks. (Table 10)

Table 1: The MTP Act 1971 and The MTP Act Amendments 2021¹⁰

	Present Amendments	Old Law
Definition of eligible women	Broadened to include any woman (married or unmarried), survivors of sexual assault, etc.	Limited to married or widowed/divorced women
Indications (Contraceptive Failures)	Unmarried & Married females are covered	Only applied to Married females
Gestational Age Limit	24 weeks for rape survivors beyond 24 weeks for substantial foetal abnormalities	20 weeks for all indications
Categories eligible for abortion up to 24 weeks	Survivors of rape, incest, minors & differently-abled women etc.	Not Applicable
Medical practitioner opinions required before termination	One RMP till 20 weeks Two RMPs till 24 weeks Medical Board approval after 24 weeks	One RMP till 12 weeks Two RMPs till 20 weeks
Break of the women's confidentiality	Fine and / or imprisonment of 1 year	Fine up to 1000

The MTP Act 1971 sets the gestational limit for abortion at 20 weeks, beyond which abortions may only be performed, barring a court order to the contrary, when there is risk to the life of the pregnant women. Even within this limit, however, doctors are often hesitant to provide abortion due to fear of investigations and prosecution.¹¹

Medical Termination Of Pregnancy And Women Issues

Different Opinions On Termination- One opinion are that terminating a pregnancy is the choice of the pregnant woman and a part of her reproductive rights while the other is that the state has an obligation to protect life, and hence should provide for the protection of the foetus.

The Medical Termination of Pregnancy Act, 1971 ("MTP Act") was passed due to the progress made in the field of medical science with respect to safer abortions. Medical Termination of Pregnancy Act (MTP Act), 1971.

In 1969, the medical termination of pregnancy Bill was introduced in the Rajya Sabha and Lok Sabha and it was passed on 2 August 1971.

Medical Termination of Pregnancy Act (MTP Act), 1971 vis a vis amendment 2021

The MTP Act 1971 contain 8 sections:

Section 1: Title of the act

Section 2: Definitions of the act

Section 3: Related to age of foetus along with number of RMP eligible to conduct MTP, qualifications of RMP, category of women.

Section 4: Related to place where MTP to be conducted.

Section 5: Provides that MTP conducted by registered medical practitioner when necessary for life saving then it is not an offence. MTP conducted by non-registered medical practitioner is offence.

Section 6: Provide power to central govt to make rules to carry out the provisions of this Act.

Section 7: Provide power to state govt. for regulation regarding application form, consent form, prohibit disclosure of identity etc.

Section 8: Provide defence for registered medical practitioner who is working in good faith and under this act.¹²

The Medical Termination Of Pregnancy Act, 2021

In a historic move to provide universal access to reproductive health services, India amended the MTP Act 1971 to further empower women by providing comprehensive abortion care to all. The new Medical Termination of Pregnancy (Amendment) Act 2021 expands the access to safe and legal abortion services on therapeutic, eugenic, humanitarian and social grounds to ensure universal access to comprehensive care.¹²

Section 2 Definitions- Guardian means a person having the care of the person of a minor or a lunatic (mentally ill person).

- "Medical Board" means the medical board constituted under sub-section (2C) of section 3 of the Act
- Lunatic (mentally ill person) has the meaning assigned to it in Section 3 of the Indian Lunacy Act, 1912. Mentally ill person means a person who is in need of treatment by reason of any mental disorder other than mental retardation.
- Minor means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority
- Registered medical practitioner means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of Section 2 of the Indian Medical Council Act 1956, whose name has been entered in a State Medical Register and who has such experience or training in gynaecology and obstetrics as may be prescribed by rules made under this Act.¹
- "termination of pregnancy" means a procedure to terminate a pregnancy by using medical or surgical methods."¹²

The Medical Termination of Pregnancy Rules, 2003

Rule 4. Experience and training under clause (d) of Section 2- Experience and training under clause (d) of Section 2- (a) In the case of a medical practitioner, who was registered in a state medical register immediately before the commencement of the Act, experience in the practice of gynaecology and obstetrics for a period of not less than three years;

- In the case of a medical practitioner, who is registered in a state medical register- (i) if he has completed six months of house surgery in gynaecology and obstetrics; or (ii) unless the following facilities are provided therein, if he had experience at any hospital for a period of not less than one year in the practice of obstetrics and gynaecology; or
- if he has assisted a registered medical practitioner in the performance of twenty-five cases of medical termination of pregnancy of which at least five have been performed independently, in a hospital established or maintained or a training institute approved for this purpose by the government.¹²
- This training would enable the registered medical practitioner (RMP) to do only 1st Trimester terminations (up to 12 weeks of gestation).
- For terminations up to twenty weeks (now twenty-four weeks) the experience or training as prescribed under sub rules (a), (b) and (d) shall apply.

Medical Termination Of Pregnancy Amendment Rule 2021

- In case of a medical practitioner who has been registered in a state medical register and who holds a post-graduate degree or diploma in gynaecology and obstetrics, the

experience or training gained during the course of such degree or diploma.¹²

The Medical Termination Of Pregnancy Rules, 2021

(b) after clause (c), the following clause shall be inserted, namely: "(ca) A registered medical practitioner shall have the following experience and training for conducting termination of pregnancy up to nine weeks of gestation period by medical methods of abortion, namely: experience at any hospital for a period of not less than three months in the practice of obstetrics and gynaecology; or has independently performed ten cases of pregnancy termination by medical methods of abortion under the supervision of a registered medical practitioner in a hospital established or maintained or a training institute approved for this purpose, by the Government."

Section 6, 2 (ab) the norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age under sub-section (2A) of section 3.

Rule "4A (1) The opinion of registered medical practitioner which is required for termination of pregnancy at different gestation ages shall be the following, namely:

- a) till nine weeks of gestation period by medical methods of abortion: registered medical practitioner eligible under clauses (a), (b), (c), (ca) and (d) of rule 4.
- b) till twelve weeks of gestation period, by surgical method: registered medical practitioner eligible under clauses (a), (b), (c) and (d) of rule 4.
- c) beyond twelve weeks till twenty weeks of gestation period: registered medical practitioner eligible under clauses (a), (b) and (d) of rule 4.

Opinion Needed For Termination Of Pregnancy:

Opinion of one registered medical practitioner (RMP) for termination of pregnancy up to 20 weeks of gestation. Opinion of two registered medical practitioners for termination of pregnancy of 20-24 weeks of gestation for category of women provided by rules. Opinion of the State-level medical board is essential for a pregnancy to be terminated after 24 weeks in case of substantial foetal abnormalities.¹²

Termination due to failure of contraceptive method or device: Under the act, a pregnancy may be terminated up to 20 weeks by a married woman in the case of failure of contraceptive method or device. It allows unmarried women to also terminate a pregnancy for this reason.

Section 3 (subsection 2) Explanation 1- For the purposes of clause (a) where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.¹²

Upper Gestation Limit for Special Categories

Increases the upper gestation limit from 20 to 24 weeks for special categories of women, including survivors of rape, victims of incest and other vulnerable women (differently abled women, minors, among others).

Rule 3B Women eligible for termination of pregnancy up to twenty-four weeks:

The following categories of women shall be considered eligible for termination of pregnancy under clause (b) of subsection (2) Section 3 of the Act, for a period of up to twenty-four weeks, namely:

- (a) Survivors of sexual assault or rape or incest
- (b) Minors
- (c) Change of marital status during the ongoing pregnancy

(widowhood and divorce)

- (d) Women with physical disabilities (major disability as per criteria laid down under the Rights of Persons with Disabilities Act, 2016 (49 of 2016))
- (e) Mentally ill women including mental retardation
- (f) The foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped and
- (g) Women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the government.

Medical Termination Of Pregnancy Amendment Act 2021

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply where termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board. (2C) Every State Government or Union territory as the case may be or shall by notification in the Official Gazette, constitute a board.

Medical Board

(2D) The Medical Board shall consist of the following, namely:

- (a) a Gynaecologist
- (b) a Paediatrician
- (c) a Radiologist or Sonologist
- (d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory,

Medical Termination of Pregnancy amendment Rule 2021

Section 6 (2) -(ac) the powers and functions of the medical board under sub-section (2C) of section 3."Rule 3A". Powers and functions of medical board.

For The Purposes Of Section 3,

- (a) **The powers of the medical board shall be the following, namely-** To allow or deny termination of pregnancy beyond twenty-four weeks of gestation period only after due consideration and ensuring that the procedure would be safe for the woman at that gestation age and whether the foetal malformation has substantial risk of it being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; co-opt other specialists in the Board and ask for any additional investigations if required, for deciding on the termination of pregnancy.¹²
- (b) **The functions of the medical board shall be the following, namely-** To examine the woman and her reports who may approach for medical termination of pregnancy under subsection (2B) of section 3; provide the opinion of medical board in Form D with regard to the termination or rejection of pregnancy within three days of receiving the request for medical termination of pregnancy.¹²

To ensure that the termination procedure, when advised by the medical board, is carried out with all safety precautions along with appropriate counselling within 5 days of the receipt of the request for medical termination of pregnancy.¹²

Confidentiality

After section 5 of the principal Act, the following section shall be inserted, Insertion of namely Protection of privacy of a woman-"5A. (1) No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act except to a person authorized by any law for the time being in force.

- (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment which may extend to one year, or with fine, or with both."

Medical Termination of Pregnancy Act (MTP Act), 1971 vis a vis amendment 2021

Significance- The new law will contribute towards ending preventable maternal mortality to help meet the Sustainable Development Goals (SDGs) 3.1, 3.7 and 5.6. SDG 3.1 pertains to reducing maternal mortality ratio whereas SDGs 3.7 and 5.6 pertain to universal access to sexual and reproductive health and rights. 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. Not allowed beyond 24-weeks.¹² The Act allows abortion after 24 weeks only in cases where a medical board diagnosis substantial foetal abnormality. This implies that for a case requiring abortion due to rape that exceeds 24-weeks, the only recourse remains through a Writ Petition.¹²

Writ petitions related to MTP Act:**1. XYZ vs Union of India (2017)- (2017) 3 SCC 458**

History Of Case- A 22-year-old pregnant woman (victim of rape) sought permission to terminate her pregnancy at 24 weeks, which was beyond the legal limit under the **Judgment:** The Supreme Court allowed the abortion, relying on the medical board's opinion that continuing the pregnancy would be dangerous to her physical and mental health.

Significance:

- Emphasized **right to bodily autonomy and dignity**.
- Set precedent for permitting termination beyond 20 weeks in exceptional cases.
- Directed formation of **medical boards** in every state for such cases.¹³

2. Ms. X v. Union of India (2022)- 2022 SCC online SC 1321

History Of Case- A 25-year-old unmarried woman, 23 weeks pregnant, sought termination after her partner abandoned her.

Judgment: The Supreme Court allowed abortion beyond 20 weeks and held that **unmarried women have the same reproductive rights** as married women under the MTP Act.

Significance:

- Interpreted Section 3(2)(b) of the amended MTP Act, 2021 **inclusively**.
- Recognized **reproductive autonomy as part of Article 21 (right to life)**.
- Extended the MTP Act's benefit to **unmarried women in consensual relationships**.¹⁴

3. High Court Rejection Overturned by SC (2023)

History Of The Case: Supreme Court of India, October 2023.

Facts: A married woman sought termination at 26 weeks due to fetal abnormalities and mental health concerns. The Delhi High Court denied the request.

Judgment: The Supreme Court overturned the High Court's ruling and permitted abortion, citing mental trauma and fetal non-viability.

Significance: Asserted the need for **liberal and compassionate interpretation** of MTP laws. Recognized the importance of **mental health and fetal abnormalities** as valid grounds beyond 24 weeks.¹⁵

Abbreviations-

MTP- Medical Termination of Pregnancy

MTP Act- Medical Termination of Pregnancy Act

RMP- Registered Medical Practitioner

SC- Supreme Court

SDG- Sustainable Development Goals

IPC- Indian Penal Code

FSL- Forensic Science Laboratory

Declarations

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