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Evolution of MTP act and ambiguous women's rights in India: A critical review

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ABSTRACT

In India, the Medical Termination of Pregnancy (MTP) act 1971 has evolved a lot, to an extent that it has brought much liberty to women with some interim to the basic sexual and reproductive health rights. In the latest MTP 2021 amendment, the legal time of MTP has been extended from 20 weeks to 24 weeks, which was the need of the hour. Even after this amendment, women's basic reproductive rights aren't assured due to the trends and acceptance of society which again has a long way to go. The system runs more as a doctor-centric rather than a women's rights-based framework. In this article, we have discussed the detailed chronology of evolution, comparison of the original act of 1971 with the latest amendment 2021; Women's reproductive rights, a few modifications that can be done to further improve the objectives, people's social awareness, and acceptance to MTP. Many more gaps are discussed thoroughly, and required modifications are suggested.

Keywords: Evolution of MTP, Reproductive Rights, Sexual Health Rights, Social Awareness on MTP.

1. INTRODUCTION

MTP (medical termination of pregnancy) in simple terms translates to termination of pregnancy adopting ethically recommended medical procedures. The MTP act was first accepted and passed in the Indian constitution assembly exactly 50 years from now (2021) and was amended in the 49th year (2020) since its existence. In common terms, MTP is also referred to as abortion, though the definition of abortion is controversial and may vary as per different countries across the world. There are many definitions associated with the word 'abortion', The most acceptable is assumed to be the one defined by National Center for Health Statistics, the Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO); who define abortion as "pregnancy termination before 20 weeks gestation or a fetus born weighing less than 500 g. Despite this, definitions vary according to state laws.[1]

Abortions are categorized into 2 categories:

1. **Spontaneous abortion**- occurs during pregnancy due to any kind of complication also known as a miscarriage.
*Facilitated intentionally or by accident during pregnancy due to any complication is also known as a miscarriage.
2. **Induced abortion**- it is further classified into 2 types
 - a. Therapeutic abortion: abortion is done for the protection of the mother's life or done when the fetus is suffering from severe health issues.
 - b. Elective abortion: abortion which is chosen except for the above two reasons [3]

For ease of understanding, we study women's rights under two headings:

Constitutional rights: Constitutional rights are the supreme rights that are guaranteed by the constitution of India.

1. article 14- the fundamental right to equality.[2]
2. Article 15- prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth
- Article 15(3)- empowers the state to make any special provision for women and children.
3. Article 21- protection of life and personal liberty.
4. Article 300a - right to property

Legal rights: The state is directed to apply these principles while making laws. Or simply the enactment in the form of prevailing law. In even simpler words they can be altered by changing or modifying the existing law.

Perspectives on abortion are different in different countries, in our country, there are two sets of conflicting interests, one is women's rights and the right to life of the fetus. There are two sets of two different ideologies

1. **Pro-life:** which focus on the right to life of the fetus
2. **Pro-choice:** which focuses on the autonomy and privacy of women.

From this, we can understand that there is a conflict between the right to abort versus the right to birth that is article 21. [4]The abortion law in India restrain the “reproductive autonomy” of women and the provisions of the Act are being violative of the provisions of the Constitution of India

About 15% of the global burden of maternal deaths is due to abortions, 8% of them are due to unsafe abortions and their related complications like hemorrhage, infection, and sepsis. 99% of unsafe abortions occur in developing countries.

In India, according to a 2015 study in the Indian Journal of medical ethics, 10-13% of maternal deaths are due to unsafe abortions (the third leading cause of maternal death in our country)[10]

2. RATIONALE FOR THE STUDY

We have chosen this topic as there is less light regarding this area of ambiguity on the doctor-centric rather than the rights-based framework of MTP ACT. We critically analyzed the MTP acts such that we can provide an understanding regarding how the state addresses women's rights, autonomy, inclination towards safe abortion procedures, female infanticide, women's reproductive rights. We tried to explain clearly the evolution of MTP acts in India since pre-independence to till date, the women's rights which are at risk or in ambiguity, a brief comparison of MTP 1971 with the 2021 amendment bill, analyzed if any loopholes or disadvantages in the bill is legislated and concluded along with our opinions of the way forward.

3. RESEARCH METHODOLOGY

For this review research article we have used doctrinal research methods. Primary sources were referred to as fundamental rights, MTP amendment bill 2021, and other such case laws. Secondary sources we referred to are scientific journals, books, newspaper articles, and various other online resources.

4. EVOLUTION OF MTP IN INDIA

Abortion was illegal in India previously, as India is a land of diversity, some religions like in Vedas abortion is condemned. In medial code of ethics paragraph 3, it was stated that “ I will keep up the most regard for human life from the season of origination”.after passing various acts abortion is considered legal in India but still today Indian law allows only abortion in conditioned situations which are doctor-centric. Let us give you a brief chronological detail on MTP law evolution.

1869 to 1967- under IPC section 312 abortion was condemned and it was done only when there is a serious life threat to women. hence even now the word “abortion” is not used. During those times abortion was considered a crime, so victims were imprisoned for a lifetime, and a fine was imposed.

1952- India was the first in the world to introduce a national family program, to keep a check on the expanding population.

IN 1960- when 15 other countries made abortion legal, in India then there was a Shri Shanti Lal shah(the then health minister, state of Maharashtra) committee appointed by the central planning commission of India, which proposed to delete section 312 and suggested a separate bill for termination of pregnancy, that was accepted by both the houses and was enacted in 1971. This was the first-ever legislation in India regarding abortion.

MTP ACT 1971- conditioned abortion was legislated, according to this at abortion can be performed under the following 4 conditions:

When there is a risk to the mother.

When there is a chance of a handicapped child or a fetal abnormality.

When the pregnancy is due to rape.

When the pregnancy is due to contraceptive failure.

This act also directs by whom, when, and where abortion can be performed. To ensure safe abortion practices, it can only be performed by the registered medical practitioner under MCI.

MTP ACT AMENDMENT 2002- As there are various reasons which led to unsafe practices by the people in rural areas, to encourage the increase of safer facilities and increase the access to safe practices. In 2002 it was amended to include various restrictions to private hospitals also for abortion services but there was a district-level committee appointed to look over the domination of private practitioners under the law, the practitioners were monitored (like the RMP must maintain the abortion records and submit them to the chief medical officer CMO) and strict penalties were imposed for unauthorized practitioners. There was a dialect adjustment to the word “LUNATIC” to “ILL PERSON” which allows any associated psychological issues[6].

MTP RULES 2003- A committee was set up which monitors the private practitioners who perform the abortions, the equipment which he employs for the procedures was also checked and the committee was given the right to cease the license of the doctor if

he is found to be incompetent. This helped increase in more private hospital facilities which in turn increases the safer access to abortions.

MTP AMENDMENT BILL 2014- MTP 1972 act was amended in section 3, it ensures that “length of the pregnancy” is independent in conditions when there is a “substantial fetal abnormality prescribed”. as there was a rise in the number of cases where women had fetal abnormalities diagnosed after 20 weeks and most of the times there was a positive decision towards abortion by the supreme court which made this amendment possible.[5] it also assured the increase in safe practices for women and also increased the clarity to women. replaced “married women” with “all women”, ensures that there is an increase in strict provider-based abortions.

MTP BILL 2018- it was passed in Loksabha stating that for a rape survivor the period of MTP is to be extended to 27 weeks. under the women's sexual, reproductive and menstrual rights bill, focused on ending the number of opinions of two medical practitioners below 12 weeks as it was the right of the women[8].

NEED FOR AMENDMENT: Case filed by Swathi agarwal, garima sekseria and prachi vats. they challenged the supreme court that the advancement in science and technology has made it possible to terminate a pregnancy after 20 weeks and they also asked for amendments in section 3(2) (a) of the MTP act, which violates human rights under the article 21 and 14. Amith sahani filed a PIL(public interest litigation) in the Delhi high court asking for an extension of termination from 20 weeks to 24 weeks. Later in 2019 Delhi high court and madras high court has put pressure on the center and state governments to make amendments as it is a matter of urgency. Later the affidavit was sent to the inter-ministerial discussion.

MTP AMENDMENT BILL 2020- The limit of abortion is extended to 24 weeks from 20 weeks which was the need of the hour. It also gave regulations on the medical board which is to be consulted after 24 weeks if necessary. The amendment clarifies the role of practitioners who hesitate to intervene in cases of rape and incest survivors.

MTP AMENDMENT BILL 2021- the amendment permits MTP without any limitation of age if there are any substantial fetal abnormalities. This observation was made by a single bench of justice Prathiba M. Singh while dealing with the case of Mahima Yadav, seeking permission to terminate her 25 weeks fetus which was reported with ‘WARFARIN EMBRYOPATHY’.

5. WOMEN'S REPRODUCTIVE RIGHTS

"Reproductive rights are the rights of individuals to decide whether to reproduce and have reproductive health. This may include an individual's right to plan a family, terminate a pregnancy, use contraceptives, learn about sex education in public schools, and gain access to reproductive health service”.

According to the universal declaration of human rights 1948, reproductive rights are basic human rights. a similar note was mentioned in an international conference on population and development in 1994. Likewise in the Beijing declaration, during the 4th world conference on women, it was stated that “The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their fertility, is basic to their empowerment”.

The scenario in India isn't the same, it can be seen that the country is still under a patriarchal society. It was only after the Menaka Gandhi case the article 21 was included with the right to privacy under the constitution of India. But still, there is evidence of biases, MTP is silent to unmarried ladies, divorced and widows as it is mentioned that it targets only rape victims and married women, and married women also have to prove the failure of contraceptives, this is nothing but the violation of the right to privacy[7]. The ease of accessibility to basic human rights in India is negligent, it's a distant topic for such deeper reproductive rights in our country. cases like Suchitra srivastava and Devika Biswas have gone to the supreme court for their autonomy in their reproductive rights, and their right to privacy but still the latest amendment is blind in these aspects.

6. OVERLAPPING OF OTHER LAWS ON MTP

It is often misconceptualized that stricter MTP rules influence the female foeticide, but its something which is dealt with by the pre-conception and pre-natal diagnostic tests PCPNDT act1994, the major aim is to criminalize sex determination through ultrasound or any other advanced developments like sonography, etc, and inhibiting female foeticide. though both the MTP and female foeticide are different concepts yet practitioners find an excuse to avoid legal problems through resentment to abortions during 2nd trimester even though there is significant fetal abnormality observed.

Another act which clashes with the MTP is PROTECTION OF CHILDREN FROM SEXUAL OFFENCES POCSO act 2012 it aims at protecting children from sexual exploitation. Under the act, sexual activity below 18 years of age should be under legal scrutiny. It requires, any person if he is aware of any such cases like which are pregnant below 18 years must report to the police irrespective of the girl's consent. This contradicts the right to privacy, and the practitioners fearing the judiciary avoid MTP on minors. There is no given clarity on if a married woman is below 18 years of age will she be legal to get an MTP done or not these tend to increase in unsafe abortions in India.

7. SOCIETAL SENSITIVITY ON ABORTION

According to the survey conducted by the Indian Institute of Population Sciences IIPS on 7 south Indian and 7 north Indian states regarding the awareness of abortion procedures and laws in India.

- The study showed that south Indians are more aware of medical abortion(using medicines for induced miscarriages).

- It is also found that 75% of males and females do know about the criminalization of sex determination and female foeticide is prosecuted. This shows the success rate of the government's initiative of awareness regarding sex determination and the resulting miscarriages.
- About 2/3 rd of men and 3/4 that of women knew about the 20-week norm to abortion in India.
- Among the surveyed, less than 40% of men and 45% of women knew that abortion to unmarried women is legal in India.
- Only 1/4th of men and women among the surveyed people knew that married women opt for induced miscarriage.

It was found that married and urban women knew more about the MTP than rural and unmarried women counterparts. Youth of south India and Maharashtra have more awareness on reproductive rights, MTP, and sexually transmitted diseases[9].

8. COMPARISON OF MTP 1971 AND MTP AMENDMENT 2021

A brief comparison of MTP 1971 and MTP AMENDMENT 2021

Table 1: Time limits and the grounds of pregnancy

	Mtp 1971	Mtp 2021
Upto 12 weeks	Advise of 1 doctor	Advise of 1 doctor
12 to 20 weeks	Advise of 2 doctors	Advise of 1 doctor
20 to 24 weeks	Not allowed	2 doctors for some specific cases of women
Above 24 weeks	Not allowed	The medical board in case of substantial fetal abnormality

Any time in the pregnancy - 1 doctor advised when there is an emergency for pregnant women.

Table 2 : Special categories

MTP AT 1971	MTP AMENDMENT 2021
Abortion norm was only till 20 weeks that to only to married women, abortion after 20 weeks is only when there is a fetal abnormality or there is a risk to mothers life.	Abortion norm extended from 20 weeks to 24 weeks only in special category women like vulnerable women including survivors of rape, victims of incest and other vulnerable women - like differently-abled women, minors, etc.

Table 3 : Acknowledgment of failure of contraception.

MTP AT 1971	MTP AMENDMENT AT 2021
MTP is available only when there is pregnancy due to the failure of any contraceptives by “married women or by her husband”.	Explanation 2 under setion3(2) “Any woman or her partner” is the term replaced in the old provision.

Table 4 : Respect to privacy

MTP AT 1971	MTP AMENDMENT AT 2021
It doesn't mention the confidentiality and privacy of women and the case.	Under section 5a (1) It is mentioned that the name and the other particulars of the women whose pregnancy has been terminated are not revealed, except to the person authorized in any law for the time being in force.

Table 5 :Upper gestational age limit for substantial fetal abnormalities

MTP AT 1971	MTP AMENDMENT AT 2021
It wasn't answered then	MTP can be provided at any time directed by the medical board.

9. LACUNAE OF MTP AMENDMENT 2021

Despite having the new amendment still there are flaws in the current framework of the MTP act. Although in the government's perspective the bill is progressive and liberal, it is humanitarian but still, the amendment doesn't go far enough. Let me show you the major unanswered drawbacks:

1. **Lack of autonomy** - even the 21st century and advanced medical technology wouldn't help bring changes in the amendment that answers the autonomy of women which is the basic human right of reproduction.
2. **Medical Board**- There are no clear guidelines on who would ensure the medical board, the financial support required for that. In the rural areas, how is the medical board available? Even the time frame within which the medical board must make a decision isn't mentioned in the bill.

3. **Marginalised People-** Some of the people like migrant workers, displaced person trans and nonbinary people, others who experience intimate partner violence are neglected, even lack of knowledge and timely diagnosis could be reasons for seeking MTP beyond 24 weeks.
4. **Confidentiality Issue-** The new bill uses the wording regarding the privacy of details of the woman using MTP it uses "authorized by the law" which compromises the confidentiality of women's rights.
5. **Absence of sale in the provider base-** As per the existing MTP, only RMP but not nurses, AYUSH practitioners, and frontline health workers are eligible for MTP, they HCP lack monitoring system as the rural areas have no availability of the human resource. 2-5% of Indian women may require surgical interventions for resolving incomplete abortions and other associated complications.
6. **Upper age limit of rape victim-** 2018 bill on MTP has suggested norm retention up to 27 weeks, now which is reduced to 24 weeks in the new amendment of 2020.[11]

10. CONCLUSION

As we have been witnessing the changes in the laws so also the development is evident by just ignoring few discrepancies. According to WHO, medical abortion using pills is the best way to treat abortion safely and timely, but this needs a lot of awareness and knowledge. There is the existence of programs like "Beti Bachao Beti padao" which have proved to reduce sex ratio difference. Even more political commitment and bringing more changes in the societal sensitization of basic human rights, which may make the society even more gender-responsive which ultimately leads to the development of the country. Although the MTP bill 2020 has taken the right decision still it must give clear guidelines on the practical ways and clinical procedures. Nobody would like to inflict pain on others, its not nice to blame a woman solely if she wants an abortion the government should look into this matter even more liberal way of understanding the consequences and give much importance to the pro-choice.

11. WAY FORWARD

From the above-discussed problems in the MTP bill 2020, I would like to give a few suggestions :

- Abortion must be given on-demand to any person (transgender, unmarried women, displaced women,) this would protect basic human rights (article 21) and allows more autonomy to the seekers.
- MTP norm must be extended to 27 weeks for the rape victims, if in any way MTP can't be suggested then the government should provide an alternative like making the child get adopted immediately [12], mere giving monthly compensation wouldn't help the victims.
- The most debated part is the definition of MTP, The definition needs to be modified in the Indian context, given the present law. Gestational age of more than 24 weeks or a baby weighing more than 650 g may be more appropriate (average weight at 24 weeks is 580 g)[13].
- The current scenario suggests that there is an urgent need for more HCP who have complete knowledge of the MTP law and its services, and also improve the curriculum of the medical and allied sciences which would be a relief for time being.
- Public health ground realities are different in India, as they vary from state to state. Public health experts say that what can be counted, can be addressed as there are less surveillance and fewer resources in addressing abortions which makes the greatest hurdle for making the proper policy.
- There must be more research regarding the departments of law and gynecology such that more provisions can be accessed.
- I would like to suggest a randomized controlled trial, giving the awareness on MTP as an intervention on vulnerable women (differently-abled, minors, displaced women, migrant workers) versus normal women in different regions, to understand the further required improvement in the bill targeting the population and ending the social factors that usually affect.
- There must be massive campaigning of the abortion rights empowerment to all the people of the nation, which may reduce the associated stereotypes, there must be an emphasis on the women's autonomy and bodily integrity.

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