

July - December 2022

Volume 31

Issue 2

PRINT ISSN: 2277-1867

ONLINE ISSN: 2277-8853



JOURNAL OF FORENSIC MEDICINE SCIENCE AND LAW

Official Publication of Medicolegal Association of Maharashtra

Editor-in-chief

Dr Ravindra Deokar

Associate Editors

Dr Sadanand Bhise

Dr Sachin Patil

**MULTISPECIALITY, MULTIDISCIPLINARY, NATIONAL
PEER REVIEWED, OPEN ACCESS, MLAM (SOCIETY) JOURNAL
Indexed with Scopus (Elsevier) & Index Copernicus (Poland)**

Editorial Office Address

Department of Forensic Medicine & Toxicology, Third Floor, Library Building, Seth G S Medical College & KEM Hospital, Parel, Mumbai, Maharashtra, India. Pin-400 012. Email id: mlameditor@gmail.com Phone: 022-24107620 Mobile No. +91-9423016325.



JOURNAL OF FORENSIC MEDICINE SCIENCE AND LAW

(Official Publication of Medicolegal Association of Maharashtra)
Email.id: mlameditor@gmail.com

PRINT ISSN:

2277-1867

ONLINE ISSN:

2277-8853

Original Review Article

Advances of Medical termination of pregnancy Amendments act in India.

Sachin S. Patil^{a*}, Ravindra B Deokar^b

^aAssociate Professor, Department of Forensic Medicine & Toxicology, LTMMC & LTMG Hospital, Sion, Mumbai, Maharashtra, India-400022.

^bProfessor (Additional), Department of Forensic Medicine & Toxicology, Seth G S Medical College & KEM Hospital, Mumbai, Maharashtra, India-400012.

Article Info

Received on: 24.10.2022

Accepted on: 30.12.2022

Key words

Abortion laws,
Amendment,
Supreme court
judgement,
Autonomy.

Abstract

Abortion or miscarriage in legal sense refers to expulsion of foetus during any time of pregnancy before completion of full term. The word "Abortion" is consequential from the Latin term *aboriri*, which denotes "failure to be born." Abortion may be spontaneous, therapeutic or induced termination of pregnancy prior to viability of foetus or capable of having separate existence outside the mother's womb. The Medical Termination of Pregnancy Act (MTP Act) 1971, can be considered as revolutionary legislature in eradication of gender discrimination, as it caused reduction in the number of perilous unlawful abortions. The MTP Amendment Act was the law which has brought India to the progressive group of nations that consider women's rights to have autonomy regarding to pregnancies. Even though there are shortcomings for safeguarding the unrestricted rights of females over their own bodies, this amendment act is surely a step in correct track. Supreme Court's judgement to include women—regardless of their marital status—under the MTP act, which permits termination of pregnancy up to 24 weeks endorse India's pledge to provide safe and legal abortion as constitutional right of every female. The apex court's recent decision proves that abortion laws in India have come a long way and are moving towards an even more progressive direction.

1. Introduction

Abortion or miscarriage in legal sense refers to expulsion of foetus during any time of pregnancy before completion of full term.¹ The word "Abortion" is consequential from the Latin term *aboriri*, which denotes "failure to be born." Abortion may be spontaneous, therapeutic or induced termination of pregnancy prior to viability of foetus or capable of having separate existence outside the mother's womb.²

Abortion has been utilised globally since ancient times for multiple reasons ranging from health to approachability. In India, the basic rights of women to have safe abortion was provided from time to time with enactment of MTP act, rules and regulations with its amendments at varying intervals. As per these acts, whoever conducts unsafe or illegal abortion is liable for punishment.

How to cite this article: Patil SS, Deokar RB. Advances of Medical termination of pregnancy Amendments act in India. J For Med Sci Law 2022;31(2):65-70.

***Corresponding author:** Dr Sachin S Patil, Associate Professor, Department of Forensic Medicine & Toxicology, Lokmanya Tilak Municipal Medical College & LTMGH, Sion, Mumbai, Maharashtra, India. Pin-400022. Email: sachinpatilmdfm@gmail.com (M): +91- 9136667077.

There are many instances where the pregnant females are pressurized to terminate the pregnancy while few females are also pressurized to control their fertility. In developing countries like India, most of the times females don't have the choice of not getting married or even if married, they don't have choice of indulging in sexual interactions resulting into pregnancy. The females also in most cases don't have freedom to continue the pregnancy. For many females, termination of pregnancy may be the only choice which may be illegal or unsafe.²

The resolution of The World Medical Association on therapeutic abortion, is also known as Declaration of Oslo was passed in 1970. A criminal abortion refers to unlawful destruction and ejection of the foetus during the pregnancy indicating no therapeutic indication for the termination of pregnancy. Widows or unmarried females were the ones who were mainly indulged in criminal abortion. Criminal abortion is seldom reported to police by someone and comes into picture on death of women at the time of termination of pregnancy.³

2. Abortions laws since ancient era:

Since ancient times, laws related to abortion were in existence. As per the Vedas, the abortion was permitted only till 5th month of intrauterine age as after that it was considered as viable child. Kautilya's arthshastra also mentions punishment for the slave woman having abortion. It is one of the oldest and most extensively used methods of control of population. Abortions were performed in every corner of the world. Induced termination of pregnancy were prevalent in all the civilizations and are regulated by various laws. These laws, rules, regulations or policies based on the country's historical aspects as well as its political, commercial, communal, divine, and cultural establishments. Under British rule, there is no record of banning of abortion in India. After the independence in 1947, the medical code of ethics of 1956 suggests respects for human life and opposition to abortion.²

Till the 1960s, Section 312 of IPC was applicable making abortion illegal in India and a female was liable for punishment for three years of imprisonment and/or a fine.⁴ Before MTP act, about five million abortions were done in India annually but out of which illegal abortions were more than three million⁵ but less than one percent convictions were done. About one seventh of total abortions were

conducted by unqualified or inexperienced persons comprising of quacks or paramedical persons. To avoid punishment by the law agencies, these females were forced to get the abortion done by crude methods in unhygienic conditions which was responsible for high morbidity and mortality.⁶ Many doctors exploit these females by wresting huge sums for conducting abortions. The inflexibility of the legal provisions for procuring abortions also lead to suicide by pregnant mothers, desertion and brutality to children as well as infanticide.⁷

During Mid-1960s, the government set up the Shantilal Shah Committee to decide that law relating to abortions to be prepared or not. Report laid by the Shantilal Shah Committee lead to introduction of a medical termination bill in Lok Sabha and Rajya Sabha which was passed by Parliament in August 1971.⁸ Medical Termination of Pregnancy (MTP) Act, 1971 act authorize termination of pregnancy to be performed in two stages: First pregnancies having gestational age extending up to 12 weeks, the opinion of single doctor was adequate. Secondly for pregnancies between gestational age of 12 to 20 weeks old, there was need of opinion of two doctors to ascertain whether the continuity of pregnancy would endanger the life of the pregnant female physically or mentally or if there is considerable threat to the child born with physical or mental abnormalities or developing the abnormalities subsequently.⁹

2.1 The Medical Termination of Pregnancy Amendment Act, 2002

Later, to facilitate the better implementation of the MTP Act 1971 and to increase access for women especially in the private health sector, the act was amended in 2002.¹⁰ This amendment comprises replacement of section 4 indicating the place where termination of pregnancy to be carried out. MTP has to be performed solitarily at government hospitals or places permitted by the government or committee constituted by the government. There was also amendment of section 5 which mentions that MTP to be done only be RMP. Violation of this act liable for imprisonment from two years to seven years. Same punishment also applicable to the owner of the place where the MTP is carried out.¹¹

2.2 The Medical Termination of Pregnancy (Amendment) Rules, 2003

The MTP laws were amended again in 2003 by the government, rationalising the physical standards of abortion clinics and founding several standards for performing the operation of first and second trimester abortions. While operation tables and equipment for abdominal or gynaecological surgery, as well as anaesthesia, resuscitation, and sterilisation equipment, are the minimum requirements for centres providing second trimester abortions, a gynaecology or a labour table requiring an operation table, revitalization and sterilisation equipment but not anaesthetic equipment is the minimum requirement for centres providing first trimester abortions. These guidelines also permit a registered medical practitioner to provide medical abortion services up to seven weeks after an unsuccessful or incomplete therapeutic abortion if the physician has access to medical abortion.¹²

2.3 The Medical Termination of Pregnancy (Amendment) Bill, 2014

This amendment bill brings modification of section 3 of the MTP Act of 1971. The MTP Act of 1971 mentions that "severe fetal defects may be found in the choice to terminate the period of abortion of the fetus," and that "the period of pregnancy shall not apply in the decision to terminate the period of abortion of the fetus." The terms "registered health care professionals" were added to this definition of "registered pregnancy termination," substituting "registered medical practitioners."¹³

2.4 The Medical Termination of Pregnancy (Amendment) Act, 2021

As per this amendment, for termination of pregnancy till 20 weeks of intrauterine life, opinion of one Registered Medical Practitioner (RMP) is adequate. Opinion of two RMPs is required for termination of pregnancy of 20-24 weeks of gestation. In case of significant foetal abnormalities, opinion of the State-level medical board is important for a pregnancy to be terminated after 24 weeks. For special categories of women comprising of rape survivors, victims of incest as well as other susceptible females like differently abled, minors and others, upper limit of termination of pregnancy was enhanced from 20 weeks to 24 weeks. The information about "name and other particulars of a woman whose pregnancy has been terminated shall not be disclosed to anyone", except to a person authorised in any law that is now in force.¹⁴

3. Discussion

The Medical Termination of Pregnancy Act (MTP Act) 1971, can be considered as revolutionary legislature in eradication of gender discrimination, as it caused reduction in the number of perilous unlawful abortions. The MTP Amendment Act was the law which has brought India to the progressive group of nations that consider women's rights to have autonomy regarding to pregnancies. Even though there are shortcomings for safeguarding the unrestricted rights of females over their own bodies, this amendment act is surely a step in correct track.¹⁵ Making the availability of safe abortion is one of the basic rights to all women needing the termination of pregnancy. An unmarried **25-year-old woman** pursued to Delhi High Court's for getting approval for termination of a pregnancy of **almost 24 weeks**, as her partner had denied to get married to her. However, Delhi HC turned down her request for termination of pregnancy. The said female appealed in Supreme Court.¹⁶ On 29 September 2022, Supreme Court gave judgement for termination of pregnancy in 24th week which will be applicable also for unmarried females.¹⁷ This Supreme Court judgement highlighted that termination of pregnancy is reproductive right of every female which is secured constitutionally. Decision of Delhi high court was based on Rule 3B of medical termination of pregnancy rules 2003 with amendment in 2021 having no mention of the unmarried females.¹⁶

The Supreme Court also clarified that the decision to retain pregnancy or to terminate pregnancy is autonomy of the female as well as to choose about her future where distinction amid married and unmarried can be entertained.¹⁷ As per Rule 3B, even the marital status of the female shifts during pregnancy to other status comprising of divorce or widowhood, abortions between 20 and 24 weeks of pregnancy are permitted. The Supreme Court stated that this Rule should also cover unmarried female who have become widow or divorced during pregnancy. The resolution of the MTP act was to make provision for females with termination of unwanted pregnancies having adverse effect on their physical health and mental health. As per an amendment to the MTP Act in the year 2021, husband has been replaced with word partner which clearly indicates that law is in favour of inclusion of unmarried females. Declining the right of an unmarried female to undergo the right to a safe abortion to be considered as violation of her personal autonomy and freedom. Article 21 of the constitution

states that right to have reproduction is constituent of her personal liberty.

In current scenario, 'uncharacteristic forms' of familial relationships are in existence comprising of live-in partnerships. Live-in relationships had been previously given sanction by the Supreme Court. These points paved the way for Supreme Court to make provision for MTP for unmarried females. Nevertheless, the implication of this judgment extends remote than its application to unmarried females needing abortions. This judgement was florilegium involving variety of issues encircling the laws of abortion in India. This judgement indicated that state should not only provide dignity to the decisions of females but also provide information, better abortion facilities and elimination of discrimination by the hands of healthcare professionals.

This court's decision unwraps the access to numerous novel constitutional avenues in relation to abortion in India.¹⁶ There should be reproductive autonomy for every female to have abortion without having permission from any other person.¹⁸ Prohibition of abortion as mode of safeguarding foetus would inevitably become unbearable, as women's rights are being considered as absolute and ultimate.¹⁶ The key reason of MTP is failure of contraception. This fact envisions the huge unmet need of contraception and counselling. The religious variances in the society hinders the females in undergoing abortion and has to be handled efficiently.¹⁹

MTP in USA

The legitimacy of abortion in various states of the United States differ to greater extent as well as procedural ban differ to larger extent. Few states ban the abortion completely throughout the pregnancy, few others ban up to particular gestational age while does not prohibit abortion throughout the gestational age. Till 2022, The states of America could not prohibit abortion preserving the female's right to undergo abortion as followed in Supreme Court rulings in *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), respectively. However, on June 24 2022. Supreme Court overturned the rulings of *Roe* and *Casey* by *Dobbs v. Jackson Women's Health Organization* permitting the states to enforce any ban on abortion, and does not otherwise conflict with federal law.²⁰

In this era comprising of *Dobbs vs Jackson*, which makes difference between the marital statuses of women who are raped, Indian Supreme Court

judgement on abortion under the MTP Act is a landmark judgement for the rights of Indian women.

Intermingling with provisions of other acts

a. PCPNDT Act, 1994

PCPNDT act came into existence in 1994 subsequent to successful movement against sex selective abortions. There is contrast between two acts where right to undergo abortion is inclusion of female autonomy and freedom to manage their bodies, at same time, PCPNDT act restrict the females from aborting the female foetuses.²¹

b. POCSO Act, 2012

Doctors are usually stuck between overlapping provisions of the MTP Act, 1971 and the POCSO Act, 2012 in cases of pregnant minor females caused by sex offences such as rape. The MTP Act's confidentiality clause necessitates doctors to safeguard the identity of the patients but the POCSO Act, 2012 requires that any person who witness the sexual act or have information about the act on minors should report to police and on failing to do so, liable for punishment. As per the study by CEHAT in Mumbai, families of the minor involving sexual offences abstain from consulting the medical practitioners and recourse to unlawful methods of abortion, thereby endangering the lives of minor girls.²²

c. The IPC, 1860

After the enactment of the MTP Act 1971, the section 312 to 316 of the Indian Penal Code relating to abortion become submissive to this Act due to clause in section 3, which allows abortion to be done by a registered practitioner under certain conditions.²³

4. Progressive features of MTP Act 2021

- Abortions beyond 20 weeks allowed: It allows abortion to be done on the advice of one doctor up to 20 weeks, and two doctors in the case of certain categories of women between 20 and 24 weeks.
- Inclusive: Enhances the upper gestation limit from 20 to 24 weeks for special categories of women including survivors of rape- thus preventing the socio-economic and psychological impact of unwanted pregnancies.
- Lowers burden on courts: Removes the limit of 24 weeks for termination of pregnancy in case of substantial foetal abnormalities, diagnosed by the newly established Medical Board-

thus easing the burden on courts of writ petition for seeking abortion beyond the permitted period.

- Maintains confidentiality: Names of the woman whose pregnancy has been terminated will be kept confidential— thus ensuring dignity and confidentiality of women.
- De-stigmatizes relations outside marriage: Relaxes termination of pregnancy due to contraceptive-failure condition for “any woman or her partner”— thus de-stigmatizes pregnancies outside marriage.
- However, there are few drawbacks with its provisions:
 - No right to abortion at will: Termination of pregnancies to be done only in certain conditions.
 - No remedy for rape victims: Beyond 24 weeks, the termination of pregnancies can be done only substantial foetal anomalies while rape victims cannot approach the Medical Board. Therefore, only remedy for rape survivor is through a Writ Petition.
 - Fixation of further upper limit for abortions of rape survivor females: As there is substantial delay while going through the multiple procedures in police stations and courts.
 - Expectation of the presence of two gynaecologists in rural areas to ascertain the necessity for abortion is unreasonable.
 - Inconsistency in the judicial decisions: Unreasonable decisions by the court pertaining to the abortion can have devastating impact on the physical and mental wellbeing of the rape survivors. One such example was in 2019 in Rajasthan where the lower court denied the abortion of pregnant female due to rape citing the reason of right to life of child. But High court permitted abortion in the pregnant female who has exceeded the limit giving reason that right of abortion of rape survivor will surpass the right of life of the child who has yet to be born.¹⁴

5. Way Forward

- India's legal structure on abortion is by large progressive, particularly in contrast to the countries including developing countries like United States of America where there are huge

restrictions on abortion, in past as well as present.

- But still there is scope for improvement in policy making and inclusion of all stakeholders on females and their reproductive rights. Also, the apex court's decision is solitary first step forward in the struggle of females for their reproductive autonomy.
- India can shadow the instances of the United Kingdom where termination of the pregnancy can be done anytime. Even, there is no specification from the World Health Organization about when pregnancy termination to be done. In addition, India should extensively involve healthcare workers like ASHA, ANM in reproductive health services.

6. Conclusion

Abortion laws in India has come a long way from the era of British rule which comprises punishment for abortion in form of imprisonment, fine or both. In the independent India, first law in relation to abortion was passed in 1971 as medical termination of Pregnancy act. It was only in 1971 that a separate law for reproductive rights—in the form of the Medical Termination of Pregnancy (MTP) Act was drafted and passed by the Indian Parliament. However, considering few shortcomings, amendments were done in the year 2003 and 2021 to make provision for medical termination of pregnancies for up to 24 weeks for special categories of women such as rape survivors, minors, women with mental disabilities, women with fetuses' abnormalities, etc. However, this act categorically excludes single women in consensual relationships, depriving them of their bodily autonomy.

Supreme Court's judgement to include women—regardless of their marital status—under the MTP act, which permits termination of pregnancy up to 24 weeks endorse India's pledge to provide safe and legal abortion as constitutional right of every female. The apex court's recent decision proves that abortion laws in India have come a long way and are moving towards an even more progressive direction.

Contributor ship of Author: All authors have equally contributed.

Conflict of interest: None.

Source of funding: Nil.

References

1. Reddy KSN. Essential of Forensic Medicine and Toxicology. 33rd edition, New Delhi, Jaypee Publishers, 2014.
2. Anand T, Chauhan A, Sharma M, Jha RS. Abortion laws in India: a critical analysis. *Int J Mech Eng.* 2022; 7(6): 61-7.
3. Bardale RV. Principles of Forensic Medicine and Toxicology. 3rd edition. New Delhi, Jaypee Publishers, 2021.
4. Section 312 I.P.C. [Cited 22 September 2022] Available from: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=350#:~:text=Whoever%20voluntarily%20causes%20a%20woman,the%20woman%20be%20quick%20with
5. Menon NM. Population policy, law enforcement and the liberalization of abortion: a socio-legal inquiry into the implementation of the abortion law in India. *J Indian Law Inst.* 1974; 16(4):626-48.
6. Gaur, K.D. "Abortion and the Law in India." 1991. [Cited 20 September 2022] Available from: dSPACE.cusat.ac.in
7. Section 317 I.P.C. [Cited 21 September 2022] Available from: <https://indiankanoon.org/doc/9383/>
8. Report of the Shah Committee to study the question of legalization of abortion. New Delhi Ministry of Health and Family Planning, Government of India. 1966.
9. The Medical Termination of Pregnancy Act [Act No. 34, 1971]. New Delhi. Ministry of Health and Family Planning, Government of India. 1971.
10. Deokar RB, Patil SS. Workplace-based Issues & Challenges in Formulating the Medical Boards under the MTP Act 2021. *J For Med Sci Law* 2022;31(1):1-2
11. The Medical Termination of Pregnancy Amendment Act, 2002 (Act No. 64 of 2002) dated 18th December 2002. New Delhi. Ministry of Health and Family Welfare, Government of India. [Cited 20 September 2022] Available from: [https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-amendment-2002#:~:text=\(1\)%20This%20Act%20may%20be,in%20the%20Official%20Gazette%2C%20appoint.&text=\(i\)%20In%20clause%20\(a,ill%20person%20shall%20be%20substituted.](https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act-amendment-2002#:~:text=(1)%20This%20Act%20may%20be,in%20the%20Official%20Gazette%2C%20appoint.&text=(i)%20In%20clause%20(a,ill%20person%20shall%20be%20substituted.)
12. The Medical Termination of Pregnancy Rules, 2003 Ministry of Health and Family Welfare, Government of India. (Department of Family Welfare) Notification New Delhi, 13th June, 2003. [Cited 19 September 2022] Available from: <http://www.mohfw.nic.in/MTP%20Rules.htm>
13. The Medical Termination of Pregnancy (Amendment) bill, 2014 [29th October, 2014] New Delhi. Ministry of Health and Family Welfare, Government of India. [Cited 19 September 2022] Available from: <https://main.mohfw.gov.in/sites/default/files/74582186651414643779.pdf>
14. The Medical Termination of Pregnancy (Amendment) ACT, 2021 NO. 8 OF 2021 [25th March, 2021] New Delhi. Ministry of Health and Family Welfare, Government of India. [Cited 20 September 2022] Available from: [http://www.nrhmhp.gov.in/sites/default/files/files/MTP%20\(Amendment\)%20Act%2C2021.pdf](http://www.nrhmhp.gov.in/sites/default/files/files/MTP%20(Amendment)%20Act%2C2021.pdf)
15. Arora V, Verma IC. The Medical Termination of Pregnancy (Amendment) Act, 2021: A step towards liberation. *Indian J Med Ethics.* 2022; 7(1):1-7.
16. Pillai G. Oxford Human Rights Hub. Gauri Pillai on the Indian Abortion Decision. 01st October 2022 [Cited 20 October 2022] Available from: <https://ohrh.law.ox.ac.uk/gauri-pillai-on-the-indian-abortion-decision/>
17. Khullar A. India Matters. Amended abortion rights in India. 10th October 2022 [Cited 22 October 2022]. Available from: <https://www.orfonline.org/expert-speak/amended-abortion-rights-in-india/>
18. Mehta T, Mohanty S. Reuters. India's top court legalises abortion regardless of marital status. 29th September 2022 [Cited 11 October 2022]. Available from: <https://www.nasdaq.com/articles/indias-top-court-legalises-abortion-regardless-of-marital-status>
19. Katke RD, Prabhudesai AA. Socio-epidemiological factors of medical termination of pregnancy: an overview in a tertiary care institute. *Int J Res Med Sci.* 2016; 4:1061-4.
20. Anderson E. Newsroom. Abortion in the United States. 01st July 2022 [Cited 20 October 2022] Available from: <https://www.kff.org/womens-health-policy/press-release/abortion-in-the-united-states/>
21. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002. (17th January 2003) New Delhi. Ministry Of Health and Family Welfare, Government of India. [Cited 20 October 2022] Available from: <https://www.indiacode.nic.in/bitstream/123456789/8399/1/pre-conception-pre-natal-diagnostic-techniques-act-1994.pdf>
22. The Protection of Children from Sexual Offences Act 2012. (19th June 2012) New Delhi. Ministry of Law and Justice, Government of India. [Cited 20 October 2022] Available from: <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>
23. Indian Penal Code 1860. (6th October 1860). [Cited 20 October 2022]. Available from: <https://indiankanoon.org/doc/1569253/>