

LEGALFOXES LAW TIMES

JUSTICE FOR WOMEN: MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2020

Introduction:

India legalized abortion for the very first time in 1971. Prior to that, under Section 312 of the IPC, abortion was criminalized by calling it ‘causing of intentional miscarriage.’ However, with the inception of The Medical Termination of Pregnancy Act 1971, abortion was legitimised.

The MTP Act 1971 is a legislation coined for the medical termination of pregnancy. Under Section 3(2)(a) pregnancy which has extended up to 12 weeks of gestation can be terminated on the condition that it is based on the counsel of one ‘registered medical practitioner’ who is defined in the Act as “*a medical practitioner who possesses any recognized medical qualification as defined in Cl.(h) of Sec. 2 of the Indian Medical Council Act, 1956 (102 of 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. Under Section 3(2)(b), pregnancy beyond 12 weeks but within 20 weeks of gestation requires the medical opinion of two such registered medical practitioners.

The MTP Act 1971 elucidates the grounds for pregnancy termination on the basis of the opinion of a registered medical practitioner; those being:

1. The life of the pregnant woman being at risk or injury to physical or mental health due to the furtherance of the pregnancy
2. Grave risk of the foetus being physically or mentally abnormal resulting in a substantial handicap
3. The pregnant woman has been a victim of rape and is therefore presumed to be subject to mental injury

¹The Medical Termination of Pregnancy Act, 1971, S. 2(d)

4. The pregnancy has been a consequence of contraceptive failure used by a married woman or her husband causing mental injury

Analysing the Medical Termination of Pregnancy (Amendment) Act, 2020:

The biggest contention against MTP Act 1917 was that it circumscribed abortion due to contraceptive failure only to “*married woman.*” There was no law protecting unmarried women. Being a beacon of light, The Medical Termination of Pregnancy (Amendment) Act, 2020 proposed to amend the MTP Act 1971. The Bill amends Section 3 and allows medical termination of pregnancy till 20 weeks, with the opinion of a single registered medical practitioner. The Bill proposes to extend the period of termination up to 24 weeks for those women who are minors, victims of incest, or rape, or handicap, with the approval of two registered medical practitioners. This amendment was needed since several abnormalities in the foetus are detected only after the 20th week when the foetal anomaly scan is done during the 20th-21st week of pregnancy. Hence, limiting the termination period to 20 weeks would mean that the woman would have to deliver a child with a risk of grave injury to its physical and mental health and also pose a risk to her own mental health.

However, the most prominent amendment is the replacement of the old provision with regards to medical termination of pregnancy due to contraceptive failure for “*only married woman or her husband*” with “*any woman or her partner.*”² Unmarried woman seeking abortion due to contraceptive failure now fall under the ambit of this legislation. Law should be dynamic and progressive in nature; in consonance with time and society.

In *Suchita Srivastava & Anr vs Chandigarh Administration*³, the Court held that:

“There is no doubt that a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as abstain from

²The Medical Termination of Pregnancy (Amendment) Act, 2020, S. 3

³*Suchita Srivastava & Anr vs Chandigarh Administration* (2009) 9. SCC, 1

procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected"

Hitherto, women have been victims of unmerited discrimination, it is time their rights were safeguarded. Recognition of the rights of these unmarried women gives them the agency of control and bodily autonomy. Discriminating between married and unmarried women was legitimising the prevalent stigma in our country enveloped around unmarried woman having sexual intercourse. This amendment saves unmarried women from perilous and illegal abortions.

The amendment Bill proposes insertion of Section 5(a) which lays down that the name and other details of a woman undergoing medical termination of pregnancy are not allowed to be revealed by the registered medical practitioner unless the person is authorised by law. Section 5(b) makes contravention of 5(a) punishable with imprisonment of up to one year, or with a fine, or both. This provision protects the privacy of pregnant women seeking abortion.

Lacuna in the Amendment:

Under Section 3(2D) of the Bill, a Medical Board is to be constituted under every state government. This allows states to include unnecessary procedures and therefore cause administrative delay. For instance, Maharashtra has made it mandatory for an abortion facility to have a blood bank within 5 km.⁴ This provision isn't only redundant but also unreasonable. The amendment Bill should provide for the supervision of such State Medical Boards.

The Bill makes it mandatory for the performance of the abortion by only 'registered medical practitioners'. This compels women who can't afford or access the consultation of 'registered medical practitioner' to resort to unsafe and illegal abortions by alternative systems. 15.6 million abortions occurred in India in 2015, out of which 78% were performed outside legal medical facilities. Unsafe abortions are the third-highest cause of maternal deaths in India.⁵ Therefore, the Bill should cater to the health of women from all sections of the society, and not only the

⁴Siddhivinayak S Hirve, Abortion Law, Policy and Services in India: A Critical Review, Reproductive Health Matters, 24, 10.1016, 117

⁵Janhavi Apte, The MTP (Amendment) Bill 2020: The Terms and Conditions on a Pro-Choice India, Young Bhartiya, (March 28, 2020, 5.47 pm),

privileged ones. Law is supposed to be dynamic in nature, with the changing needs of the society, law should also get amended for ensuring the welfare of the people.