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# ABORTION LAW IN INDIA

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In India 7 million abortions are taking place annually. About 50 percent of total abortions in India are considered illegal. The Medical Termination of Pregnancy Act and related Rules regarding abortion were clarified by the Supreme Court recently.

The SC noted that under Article 21, a woman's right to reproductive freedom is an integral component of her freedom. The Supreme Court also ruled that denying an unmarried woman access to a safe abortion breaches her autonomy and freedom.

## 1. What is Abortion?

Abortion is the termination of a pregnancy by removal or expulsion of an embryo or foetus. An abortion that occurs without intervention is known as a miscarriage or "spontaneous abortion"; these occur in approximately 30% to 40% of all pregnancies. When deliberate steps are taken to end a pregnancy, it is called an induced abortion, or less frequently "induced miscarriage". The unmodified word abortion generally refers to an induced abortion. The most common reason women give for having an abortion is for birth-timing and limiting family size. Other reasons reported include maternal health, an inability to afford a child, domestic violence, lack of support, feeling they are too young, wishing to complete education or advance a career, and not being able or willing to raise a child conceived as a result of rape or incest. It can be done two different ways:

- Medication abortion, which uses medicines to end the pregnancy. It is sometimes called a "medical abortion" or "abortion with pills."
- Procedural abortion, a procedure to remove the pregnancy from the uterus. It is sometimes called a "surgical abortion."

## **2. Why we need abortion laws?**

Abortion laws are necessary to ensure that women have access to safe and legal abortion services. Legalizing abortion guarantees women the right to make their choice and imparts independence and justice. Abortion is a significant public health concern that needs to be addressed legally so that all women have access to safe, timely, and respectful abortion. The right to access safe abortion services must be codified in law in accordance with human rights standards that require ensuring the availability, accessibility, affordability, acceptability, and quality of abortion services, free and informed decision-making, and adequate financial investment. Where safe and legal abortion services are restricted or not fully available, a number of human rights may be at risk, including the rights to life, to health, to information, to non-discrimination and equality, to be free from cruel, inhuman and degrading treatment, to privacy, to decide the number and spacing of children, to liberty, to enjoy the benefits of scientific progress, and to freedom of conscience and religion.

## **3. About abortion laws:**

Abortion laws vary widely among countries and territories, and have changed over time. Such laws range from being freely available on request, to regulation or restrictions of various kinds, to outright prohibition in all circumstances. In India, the legal landscape surrounding abortion has evolved over the years to promote women's health and empower them with choices. The Medical Termination of Pregnancy (MTP) Act, 1971 is an Indian law that allows for the termination of certain pregnancies by registered medical practitioners on certain grounds. The Act was amended in 2020 and 2021 to increase the gestation limit and to provide more autonomy to women. The article at provides a detailed study of various provisions relating to abortion and the separate Act, i.e., the Medical Termination of Pregnancy (MTP) Act, 1971, along with important case laws and recent developments. It begins with a brief introduction of the term 'abortion' and its meaning, followed by a detailed study of various provisions relating to abortion and the MTP Act, 1971, along with important case laws and recent developments.

## **4. History of abortion law:**

The history of abortion laws in India is a complex one. Before the Medical Termination of Pregnancy Act (MTPA) of 1971, providers of abortion services and women would face up to 3

and 7 years of imprisonment, respectively, for providing and seeking an abortion . The only exception to this rule was in the case that there was a threat to the life of the pregnant woman. In 1966, then minister of public health, law and judiciary, Shantilal Shah said that this law needed to be liberalised, as it was too restrictive. This was what led to India's first laws on abortion, where the termination of a pregnancy would be legal, if qualified medical practitioners allowed it .

The MTPA, 1971, which came into effect in 1972, legalised abortion in India, if qualified medical practitioners allowed it <sup>2</sup>. For its time, India's laws around abortion were progressive – women had the right to terminate their pregnancy to the permissible limit of 20 weeks . Still, the MTPA, 1971 had its drawbacks. For starters, women were only allowed to terminate their pregnancies if two registered medical practitioners agreed that continuing the pregnancy in its current state posed a risk to the life of the woman or child. Pregnancies caused by rape or contraceptive failure within marriage were also fairgrounds for aborting a pregnancy. In other words, women could only freely get an abortion in the case of rape or contraceptive failure. It was up to the doctor's jurisdiction whether or not a woman could obtain an abortion. Minors and mentally ill women were required by law to provide the consent of a guardian for an abortion to take place .

The MTPA was amended in 2020 and 2021 to increase the gestation limit and to provide more autonomy to women . The enhanced MTPA, 2021 gives doctors, and not women the final say over whether abortion should be carried out . The fact remains that Indian women do not have complete autonomy over their reproductive rights .

## 5. How did abortion laws come about in India?

- In the 1960s, in the wake of a high number of induced abortions taking place, the Union government ordered the constitution of the **Shantilal Shah Committee** to deliberate on the legalisation of abortion in the country.
- The **Medical Termination of Pregnancy (MTP) Act** was brought into force in 1971. This law is an exception to the **Indian Penal Code (IPC) provisions of 312 and 313** and sets out the rules of how and when a medical abortion can be carried out.
- Under **Section 312 of the IPC**, a person who “voluntarily causes a woman with child to miscarry” is liable for punishment, attracting a jail term of up to **three years** or fine or

both, unless it was done in good faith where the purpose was to save the life of the pregnant woman.

- **Section 313** of the IPC states that a person who causes the miscarriage without the consent of the pregnant woman, whether or not she is in the advanced stages of her pregnancy, shall be punished with life imprisonment or a jail term that could extend to **10 years**, as well as a fine.

## 6. Grounds of termination of pregnancy:

The Medical Termination of Pregnancy (MTP) Act, 1971 allows for the termination of certain pregnancies by registered medical practitioners on certain grounds. The Act was amended in 2020 and 2021 to increase the gestation limit and to provide more autonomy to women. 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. The following are the grounds for termination of pregnancy under the MTP Act, 1971:

- a) Continuance of the pregnancy would involve a risk to the life of the pregnant woman or would cause grave injury to her “physical or mental health” or if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.
- b) Pregnancy caused by rape.
- c) Pregnancy caused by failure of contraceptive device.
- d) Pregnancy caused by failure of contraceptive method.
- e) Pregnancy caused by failure of sterilization method.
- f) Pregnancy caused by failure of sterilization operation.
- g) Pregnancy caused by any other reason.

## The MTP Act 1971 and The MTP Act Amendments 2021

	MTP Act 1971	The MTP Amendment Act 2021
Indications (Contraceptive failure)	Only applies to married women	Unmarried women are also covered
Gestational Age Limit	20 weeks for all indications	24 weeks for rape survivors Beyond 24 weeks for substantial fetal abnormalities
Medical practitioner opinions required before termination	One RMP till 12 weeks Two RMPs till 20 weeks	One RMP till 20 weeks Two RMPs 20-24 weeks Medical Board approval after 24 weeks
Breach of the woman's confidentiality	Fine up to Rs 1000	Fine and/or Imprisonment of 1 year

### 7. THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT)ACT, 2021

The wave of change was seen in the reproductive health-care system when the Medical Termination of Pregnancy (Amendment) Bill, 2020 got its introduction in the Lok Sabha on March 2, 2020, got the approval from the Parliament on March 17, 2020, and finally got the assent of the president of India on March 25, 2021, thereby turning into a comprehensive law regulating the provisions of abortion in India.

Some of the key features of the MTP (Amendment) Act, 2021 are discussed as following:

- Increase in upper limit for termination of pregnancy- The MTP(Amendment)Act 2021 aims to increase the gestation limit for the woman bearing the child i.e., if the pregnant woman wants to terminate her pregnancy up to the gestation limit of twenty weeks, she needs to have the opinion of one registered medical practitioner and for the gestation limit of twenty to twenty-four weeks, she needs to consult the two registered medical practitioners. The upper gestation limit is also increased from twenty to twenty-four weeks for special categories of women such as for the victims of rape or incest, minors, and differently-abled women. However, this rule is not applicable in cases where

substantial abnormalities are found in the foetus.

- Constitution of Medical Board– The new Act provides for the constitution of the Medical Board whose duty is to specifically deal with those cases where substantial abnormalities are found to exist in the foetus. On the opinion of the Medical Board, such pregnancies may be terminated after twenty-four weeks in which the risk of child being born as mentally or physically handicap remains on the higher side.
- Contraceptive failure cases- the new Act also gives the liberation to those women who became pregnant because of failure of contraceptive device. Such women have the right to abort the child up to the twenty weeks of gestation limit.
- Replacement of the words “married woman and her husband”- The amended Act has opened gates for termination of pregnancies for those women who are not married or are part of live-into relationships. The words “married woman and her husband” now stands replaced by the words “women and her partner”. Such changes can reduce the plethora of complications which were earlier faced by the unmarried pregnant women as the burden of shame, guilt and feeling of inferiority complex was attached to them due to which majority of the times such women were provoked to commit suicide.
- Protection of right to privacy of the pregnant woman- The legislature in amended Act has made sincere efforts to protect the privacy of the female who undergoes abortion as according to the new provisions only the person who is authorized by law is given permission to know about the status of pregnant woman who wants to exercise her right of abortion. If the registered medical practitioners try to break this rule, he may be punished with an imprisonment up to one year, fine or both.

## **8. Judicial interventions in cases of abortions:**

- Justice K.S. Puttaswam vs. Union of India and others: The Supreme Court had held that the decision by a pregnant person on whether to continue a pregnancy or not is part of such a person’s right to privacy as well and, therefore, the right to life and personal liberty under Article 21 of the Constitution.
- Calcutta High Court: It allowed a 37year old woman, who was 34 weeks into her pregnancy, to get a medical abortion as the foetus was diagnosed with an incurable spinal condition. This judgment allowed abortion for the furthest gestation in the country so far.

## Way Forward

- It is commendable that the Central Government has taken such a bold stand while balancing the diverse cultures, traditions and schools of thought that our country maintains, however the amendment still leaves women with various conditionalities, which in many cases become an impediment in access to safe abortion.
- In **Justice K.S. Puttaswamy (Retd.) vs. the Union of India and Others (2017)**, the court recognized the constitutional right of women to make reproductive choices, as a part of personal liberty under **Article 21** of the Indian Constitution, which, despite laying a robust jurisprudence on reproductive rights and the privacy of a woman, does not translate into a fundamental shift in power from the doctor to the woman seeking an abortion.
- The government needs to ensure that all norms and standardised protocols in clinical practice to facilitate abortions are followed in health care institutions across the country.
- Along with that, the question of abortion needs to be decided on the basis of human rights, the principles of solid science, and in step with advancements in technology.
- Since it has now become an act, one can be assured that the country is on the road to advancement, addressing women issues more fiercely than ever.

## 9. Conclusion

Abortion laws in India have evolved over the years to promote women's health and empower them with choices. The Medical Termination of Pregnancy (MTP) Act, 1971 is an Indian law that allows for the termination of certain pregnancies by registered medical practitioners on certain grounds . The Act was amended in 2020 and 2021 to increase the gestation limit and to provide more autonomy to women . 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 . The MTPA, 1971 legalised abortion in India, if qualified medical practitioners allowed it . Women had the right to terminate their pregnancy to the permissible limit of 20 weeks . The enhanced MTPA, 2021 gives doctors, and not women the final says over whether abortion should be carried out . The fact remains that Indian women do not have complete autonomy over their reproductive rights .

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