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“THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021- CRITICAL ANALYSIS ON PROTECTING REPRODUCTIVE AND ABORTION RIGHTS OF WOMEN IN INDIA”

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I. ABSTRACT:

The importance of mental health, reproductive freedom, and the right to life with dignity are purely interconnected with a woman's reproductive rights which encompass a broad spectrum of human rights standards. Over the years, Indian courts and other courts across the globe have witnessed notable judgements recognizing women's reproductive and abortion rights as part of essential rights. India has itself committed to safeguarding human and reproductive rights which revolved in various international forums. After a long consultative process involving several governmental and non-governmental agencies, professional bodies, and activists, the women's rights to Reproduction and Abortion were tried to revolve through landmark judgements. To effectively implement these policies, political will and commitment in terms of adequate resource allocation, training, and infrastructure support should come into the picture accompanied by social inputs based on women's needs. This paper presents the efforts made to demarcate the sphere of **the Medical Termination of Pregnancy (Amendment) Act, 2021** along with the endeavor to protect the reproductive health of women through the amendments made and their implications in the Indian society.

II. KEY TERMS:

Human Rights, Reproductive and Abortion Rights, Indian history of practicing abortion, Prohibition on Sex Determination, Protection of women, The Medical Termination of Pregnancy (Amendment) Act, 2021, Implementation and Challenges.

III. SCOPE:

This research paper aims to underline the importance of Women's Reproductive and Abortion Rights in India in respect of Socio-economic, civil and political rights in a broad spectrum. It envisages on the critical analysis of **the Medical Termination of Pregnancy (Amendment) Act 2021** with its aim, objectives, regulations and challenges faced in the parameters of Indian Society.

IV. HYPOTHESES:

This research paper is based on the following hypotheses:

- A woman is entitled to get the Reproductive and Abortion rights vis-a-vis consensual decision-making ability.
- The majority of rural women are deprived of medical rights and Education on the same is desperately needed.
- The scope of the Medical Termination of Pregnancy (Amendment) Act 2021 has broadened the purview of Women's rights and responsibilities including unnatural case victims.
- The MTP Act has specific social and economic challenges to properly implement in India in a broader aspect.

V. INTRODUCTION:

Abortion and Reproductive rights of women are one of the most talked about, yet still a grey area with respect to human rights and fundamental rights. Reproductive rights are essential to the realization of all human rights, because these encompass a broad spectrum of socio-economic, civil and political rights, from the rights to health and dignity, to the rights to equality and non-

discrimination, and privacy. It not only impacts human rights standards,¹ but also emphasizes the importance of maternal health, contraception, abortion, and child marriage. Because **Women's sexual and reproductive health** is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination.

Despite several obligations, violations of women's sexual and reproductive health rights are frequent. This takes up many forms including **denial of access of good quality services** that women require, incidents related to women's reproductive and sexual health without the woman's consent, forced sterilization, forced virginity examinations, and forced abortion. Woman's rights of sexual and reproductive health are also threatened when they are subjected to **Female Genital Mutilation (FGM)** and early marriage.

Patriarchal concepts of women's roles within the family also impact negatively when women are judged on the basis of their ability to reproduce. Women are also often blamed and tortured for infertility and being unable to give birth to a male child after several tries.

Over the last decade, Indian courts have issued several notable decisions recognizing women's reproductive and abortion rights as part of the "**essential rights**" which is exclusively protected under the fundamental right to life. In certain ground-breaking judgments, the courts have adopted robust decisions by adding value to women's rights concerning pregnancy. Despite 30 years of liberal legislation, a major portion of female population of India still lack access to safe abortion facilities.

The Medical Termination of Pregnancy (Amendment) Bill, 2020 was introduced in the Lok Sabha on 2nd March 2020. 1 It received Parliament's approval on 17th March 2020 and eventually received the President's assent on 25th March 2021, resulting in a comprehensive law governing abortions in India.²

¹ Devika Biswas v. Union of India, W.P. (C) 81/2012.

² Government of India. The Medical Termination of Pregnancy (Amendment) Act 2021; The Gazette of India: New Delhi.

VI. ANALYSING REPRODUCTIVE AND ABORTION RIGHTS IN INDIA:

Reproductive rights rest on the endorsement of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children. It also includes their right to make decisions, as expressed in human rights documents concerning reproduction free of discrimination, coercion and violence. The equal relationships between women and men in matters of sexual relations and reproduction play a significant role, including full respect for the person's integrity, mutual respect, consent and shared responsibility for **sexual behaviour and its consequences**. The right of a woman to choose to be a mother or not emerges from her human right to live with dignity which, falls within **Article 21 of the Constitution**.

The Indian Penal Code 1862 and the Code of Criminal Procedure 1898, with their origins in the British Offences against **the Person Act 1861**, made abortion a crime punishable for both the woman and the abortionist except to save the woman. The **1960s and 70s** saw the liberalization of abortion laws across Europe and the Americas which continued in many other parts of the world through the 1980s. Until 1973 abortion was considered a crime unless performed by physicians to protect the life of the mother, a phrase often broadly interpreted. The liberalization of abortion law in India started in 1964 in the context of high maternal mortality due to unsafe abortion. Untrained persons performed thousands of abortions each year using unhygienic and dangerous means, resulting in permanent damage of organs, and the death of many women.³ The presence of numerous interdictions associated with unsafe abortions have always triggered end number of debates regarding this issue.⁴

India has committed itself to safeguarding human and reproductive rights revolved in various international forums. **In the year 1964**, the Government of India tried to consult a special committee for the purpose of drafting a full-fledged special law regarding the practice of abortion in India. Led by Shantilal Shah, **Shantilal committee** succeeded in reaching to a final submission

³ Yokoe R, Rowe R, Choudhury SS, Rani A, Zahir F, Nair M, et al. Unsafe abortion and abortion-related death among 1.8 million women in India. *BMJ Global Health*. 2019;4. doi:10.1136/bmjgh-2019- 001491.

⁴ Alaka Malwade Basu, The Socio- cultural and Political Aspects of Abortion: Global Perspectives 102(2003).

of drafting a separate and special law for abortion considering various suggestions of laws upholding the abortion rights of citizens of India. Several recommendations were presented by this committee to draft a comprehensive law and finally pass those proposals to the parliament in the form of a bill known as **the Medical Termination of Pregnancy Bill**.

After a long consultative process involving various governmental and non-governmental agencies, professional bodies and activists, the Parliament of India enacted **the Medical Termination of Pregnancy (Amendment) Act 2021** and amended Rules and Regulations relating to termination of pregnancy.

VII. REFORMING LEGISLATIONS RELATED TO THE MEDICAL TERMINATION OF PREGNANCY:

The history of **the Medical Termination of Pregnancy Act** can be traced back to the 1960s when illegal and unsafe abortions were prevalent in India. According to estimates, over **6.4 million** abortions were performed annually, and most of them were unsafe and carried out by untrained persons. Women who sought abortions were often subjected to severe physical and mental trauma, and many even lost their lives due to complications arising from unsafe abortions.

In 1964, the Indian government appointed a committee to study the problem of illegal abortions and to make recommendations on how to address it. The committee recommended that the government should legalize and regulate abortion services to provide women with safe and legal options. **The MTP Act** was then enacted in **1971**, which legalized abortions **up to 20 weeks of gestation** and under certain conditions.

However, despite the legalization of abortion services, access to safe and legal abortions remained a challenge. There were several legal and practical barriers that prevented women from accessing these services, such as lack of trained providers, stigma, and social norms. Furthermore, the MTP Act did not address the issue of access to abortion services for women who were **beyond 20 weeks of gestation**, even if their lives were at risk.

To address these challenges, the MTP Act was amended **in 2002** to expand the scope of legal abortions to include pregnancies resulting from rape, contraceptive failure, and those involving fetal abnormalities. The amendment also extended the period for legal abortions **from 12 to 20 weeks of gestation**. However, the amendment did not address the issue of access to abortion services for women who were beyond 20 weeks of gestation.

In 2014, the MTP Act was amended again to address the issue of access to safe and legal abortion services for women who were **beyond 20 weeks of gestation**. The amendment allowed for medical termination of pregnancies after 20 weeks if two medical practitioners agreed that continuing the pregnancy would endanger the woman's life or would cause severe physical or mental abnormalities in the fetus. This amendment provided women with access to safe and legal abortion services, even if they were beyond 20 weeks of gestation.

Despite these amendments, there were still some challenges that needed to be addressed, which led to the proposed **MTP Amendment Bill in 2021**. The Bill seeks to address several issues, including expanding the purview of legal providers who can perform abortions, allowing women to seek abortions on the basis of their **own reproductive choices**, and enhancing access to abortion services in rural areas. The Bill also seeks to strengthen the provisions for the regulation of surrogacy in India. It proposes to prohibit commercial surrogacy, which involves the payment of money for carrying a pregnancy to term, and to allow altruistic surrogacy, where a woman carries a pregnancy for another person without payment. This provision aims to protect women from exploitation and to ensure that surrogacy is carried out in an ethical and regulated manner.

The MTP Amendment Bill 2021 is the latest amendment proposed for **the Medical Termination of Pregnancy Act, 1971** to provide women in India with access to safe and legal abortion services. It has been amended twice before in 2002 and 2014, seeking to address several challenges, including expanding the provisions amounting to an increased number of safe legal abortions.

VIII. THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT 2021:

The MTP Bill, 2020, has been adopted in India as a breath of fresh air as it removed the existing limitation on abortions in cases of serious foetal abnormality and extended the limit for legal abortions for certain categories of women to **24 weeks**. The term "**termination of pregnancy**" has been defined as "**a procedure to terminate a pregnancy by using medical or surgical methods**" under **Section 2(e) of the MTP (Amendment) Act, 2021**. On two prominent grounds, this Act is seen as a significant amendment under the MTPA's existing legal framework-

Firstly, the Act increased the upper limit of legal abortions from **20 weeks to 24 weeks**; **Secondly**, the amendment has replaced the term "**any married woman or her husband**" with "**any woman or her partner**", recognizing instances of abortion resulting from contraceptive failure and allowing for non-marital pregnancies. This change has given unmarried and single pregnant women equal rights as married women, expanding the original scope of the MTPA.

The legislature in the amended Act has made sincere efforts to protect the privacy of the female who undergoes an abortion. 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.

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.

IX. IMPACT OF THE ACT IN INDIAN SOCIAL SCENARIO:

One of the most significant impacts of **the MTP Amendment Act, 2021** has been on women's reproductive rights. The act has been hailed as a positive step towards ensuring that women have

greater control over their bodies and reproductive choices. The increased time limit for abortions means that women have more time to make a decision and obtain the necessary medical care, which can be especially important in cases of fetal abnormalities or other health concerns.

Moreover, the introduction of RMPs as **Registered Medical Practitioner** has also helped to increase access to safe and legal abortions, particularly in rural areas where there may be a shortage of doctors. This has been an important development, as access to safe abortion services is critical to reducing **maternal mortality and morbidity rates**.

However, while the **MTP Amendment Act, 2021** has been a positive development for women's reproductive rights, there are still concerns about its impact on society. For example, some have criticized the act for not going far enough in terms of recognizing abortion as a fundamental right for women. The act still requires women to meet certain criteria, such as proving that their physical or mental health is at risk, in order to obtain an abortion. This means that women who do not meet these criteria may still face barriers to obtaining an abortion.

Furthermore, there are concerns about **the implementation of the act** and whether women are able to access the new services that it provides. For example, there may be a lack of awareness among both healthcare providers and women themselves about the changes brought about by the act, which could prevent women from accessing the care that they need. There may also be social and cultural barriers that prevent women from seeking abortions or that lead to **social stigma and discrimination** against those who do seek them.

Another concern is that the act does not address the root causes of unwanted pregnancies, such as **inadequate access to contraception and sex education**. While the act does allow for easier access to safe and legal abortions, it does not do enough to prevent unintended pregnancies from occurring in the first place. This could be a missed opportunity to address the underlying issues that contribute to the need for abortions in the first place.

The Medical Termination of Pregnancy (Amendment) Act, 2021 has had a significant impact on society, particularly in terms of women's reproductive rights and access to safe and legal

abortions. While there are concerns about the act's limitations and its implementation, it represents an important step forward in ensuring that women have greater control over their bodies and reproductive choices. However, there is still work to be done to address the underlying issues that contribute to unintended pregnancies and to ensure that all women have access to the care that they need.

X. CHALLENGES OF THE ACT- ENSURING BETTER IMPLEMENTATION ON CONTEMPORARY SOCIETY:

While there is a compelling need to improve woman's access to risk-free termination of pregnancies to mitigate the maternal mortality rate, the challenges faced by Indian women are prevalent in every step. However, as per 2018-19 data released by the All-India Rural Health Statistics, there is an acute shortage of **more than 75% specialist doctors at Community Health Centres ("CHCs")** in rural areas across the country.⁵ Moreover, the National Health Profile of 2017 also highlights that the Country has only one specialized medical professional for nearly 10,200 people in the public sector.⁶

Besides this, there is another recent research study conducted by the Centre for Justice, Law and Society at Jindal Global Law School which states that there is a glaring shortage of roughly **80% specialist medical professionals** at CHCs, who are well-equipped to carry out abortions.⁷

In some states like Tamil Nadu and Gujarat, there is almost no availability of specialized doctors in rural areas, while in Meghalaya, Mizoram, Arunachal Pradesh, and Sikkim, there is a shocking **100% lack of pediatricians** in the Medical Board at the state level.

⁵ Volume issued in Ministry of Health and Family Welfare.

⁶ Central Bureau of Health Intelligence, http://www.indiaenvironmentportal.org.in/files/file/NHP_2017-1.pdf (last visited on Mar. 31, 2021).

⁷ Kalantry, Sital; Brundige, Elizabeth; Gupta, Priya S.; Cornell Law School. International Human Rights Clinic; and Jindal Global Law School. Good Rural Governance and Citizen Participation Clinic, *Promoting Clinical Legal Education in India: A Case Study of the Citizen Participation Clinic*, Cornell Law Faculty Publications, (2012).

A female victim of rape whose pregnancy has progressed **beyond the 24-week mark** is required to seek the assistance of the court in order to abort the child. When the decision to abort the child is delayed by the judiciary for various reasons, the complexities in abortion cases multiply.

The complications in abortion cases multiply when the decision regarding aborting the child or not is delayed due to various reasons by judiciary. The amended Act has not laid down any time –limit within which the Medical Board should give a decision regarding removal of the fetus. Termination of pregnancy is a **time-bound act**, causing an unnecessary delay can always put the pregnant woman in a state of risk and dilemma.

Though the amendment came into force, there is a pervasive lack of understanding of the MTP Act, its conditions, and its revisions among the general public.

XI. CONCLUSION:

This paper illustrates the significant and evolving role to address the legal and practical barriers which intend to deny women and girls their reproductive rights. Women's rights to her reproductive and maternal health following gender justice are deep-rooted concerns that require special consideration because this influence not just the welfare of women but also the wellbeing of entire society.

Since women's right to reproductive and maternal health is **fundamental to gender justice**, it is imperative to consider these issues with special attention as they have far-reaching effects on society's welfare. Despite recent law and policy reforms, gender and reproductive rights activists are still dissatisfied with the outcome, as abortion is still not recognized as a woman's choice that can be **pursued on-demand**, unlike in 73 other countries.

While the recent legal and policy reforms represent a step forward in ensuring a woman's right to safe abortion care, their effective implementation requires political will and commitment, as well as adequate resource allocation, training, and infrastructure support, based on women's needs. Indian courts have created a mandate for the government to shift away from population control

approaches, confront discriminatory stereotypes, and instead center women's rights to dignity, autonomy, and bodily integrity in reproductive health-related laws and policies. It is therefore important for the Indian Parliament to take advantage of this opportunity to amend the pending **MTP (Amendment) Bill** and the **Surrogacy (Regulation) Bill** in accordance with the privacy judgment and protect an individual's privacy.

There are **several suggestions** that could be adopted to tackle the issue of abortion. **First and foremost**, educational institutions must make efforts to provide information to students about the complications involved in procedures like abortion and surrogacy, so that they can handle such situations in the future with utmost care and caution.

Secondly, the Central Government of India and respective State Governments must make efforts to improve the quality of legal abortion services, so that women have access to safe and effective procedures.

Finally, an emergency helpline number could be established to ensure that cases requiring immediate attention in relation to abortion services can be dealt with without wasting any time. **In conclusion**, reproductive rights are an essential component of women's rights and are necessary for the wellbeing of society as a whole. Addressing the legal and practical barriers that deny women and girls their reproductive rights require significant and evolving efforts. The way forward for **post-20-week abortions** should consider women's choices and ensure that substantive law and procedures respect those choices.

While recent legal and policy reforms represent progress, there is still more that can be done to ensure women's reproductive rights are protected. Adopting suggestions like providing education on reproductive health and improving the quality of legal abortion services can go a long way in achieving this goal.