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# MEDICAL TERMINATION OF PREGNANCY ACT 2021 MAKES ABORTION SAFER AND MORE ACCESSIBLE FROM HUMAN RIGHTS PERSPECTIVE : A STUDY

**Dr. Pratibha G. Chavan**

## Introduction

Human Rights are inherent in all people regardless of caste, creed, religion, sex, or nationality. These rights are fundamental to everyone's independence and dignity, as well as their physical, moral, social, and spiritual well-being. They are also required because they offer a conducive atmosphere for the material and spiritual development of the people. Human rights are also known as fundamental rights, basic rights, inherent rights, natural rights, and birth rights.

Article 6(1) of the International Covenant on Civil and Political Rights prohibits the arbitrary deprivation of life. But there are some controversial issues related to this supreme right. One such issue is the question of the Right to abortion. Among other women's rights, it is thought that every mother has a universal right to abortion. However, the mother's rights must be weighed against the unborn. Previously, abortion was not authorized and was fiercely condemned by society. Terminating a pregnancy was dubbed "murder of the foetus." But due to the change in time and technology, nowadays this right has been legally sanctioned by most of the nations after the famous decision of Roe Vs Wade by the US Supreme Court [1]

Abortion means the expulsion of the products of conception at any period of gestation before full term. The distinction between abortion, miscarriage, and premature labour is not recognized in law and all are referred to as abortion. These terms are sometimes used to signify expulsion of the embryo or foetus during the first, second, and third trimesters of pregnancy respectively.

Abortions are classified into two groups, viz (1) those which occur naturally or spontaneously, and are known as natural, and (2) those which occur as a direct result of interference with the pregnancy, and are known as artificial. Artificial abortions may be either (a) legal or justifiable, and (b) criminal.

While establishing the democratic setup, our Constitution framers were diligent and inculcated the belief that citizens must be protected against misuse of power by the government and its officials.

Pregnant women are having fundamental rights given under Articles 14, 19, and 21 of the Constitution of India which described as "Golden Triangle. Article 14 declares that "the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The right to freedom of speech and expression flows naturally and is protected by national and international instruments. The most cherished right is the Right to Life and Personal Liberty protected by Article 21 of the Constitution. In this context, every woman owes an individual right, right to her life or personal liberty, and to the pursuit of her happiness, that sanctions her right to have an abortion. The women have reproductive features and have the right to decide about their sexual health and shape their reproductive choices.

In ***Justice K.S. Puttaswamy (Retd.) vs. the Union of India and Others*** **(2017),**[2] 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, although establishes a strong precedent for reproductive rights and a woman's privacy, does not result in a substantial transfer of authority from the doctor to the woman seeking an abortion. Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights conferred by part-III of the Constitution.

**Comparison of old and new Act of MTP**

Movement for MTP Act 2021 started in 2008, Dr. Datar initially approached the Mumbai High Court and later the Supreme Court on behalf of his patient, Nikita Mehta, who wanted to terminate her 24-week pregnancy after a scan that revealed the cardiac anomalies in the foetus. While Mehta did not get permission to terminate the pregnancy and subsequently lost her baby, Dr. Datar maintained his argument for an extension of the 20-week time restriction. His logic was straightforward; some brain and cardiac defects do not manifest themselves in scans until the 20th week. As a result, amendments to the MTP Act were required.

Gestation limit as per the original 1971 Act, which allowed abortions only up to 20 weeks. Previously, one doctor had to approve an abortion for pregnancy lasting up to 12 weeks and two doctors had to approve abortions for pregnancy lasting between 12 and 20 weeks. Only one doctor must authorize up to 20 weeks under the new standards, and two between 20 and 24 weeks. In circumstances when the pregnancy has progressed beyond 24 weeks and there are significant foetal abnormalities, a state Medical Board will make a decision. It **Increases the upper gestation limit from 20 to 24 weeks** for special categories of women, including **survivors of rape, victims of incest, and other vulnerable women** (differently-abled women, minors, among others). **Confidentiality was maintained as** the

"name and other particulars of a woman whose pregnancy has been terminated shall not be revealed", except to a person authorized in any law that is currently in force. The new legislation will contribute to the goal of eradicating avoidable maternal death and assisting in the achievement of the Sustainable Development Goals. The new Medical Termination of Pregnancy (Amendment) Act 2021 broadens access to safe and legal abortion on therapeutic, eugenic, humanitarian, and social grounds, ensuring universal access to comprehensive treatment. It will ensure dignity, autonomy, confidentiality, and justice for women who need to terminate the pregnancy. The Supreme Court in the case of Suchita Srivastava v. Chandigarh Administration[3] has decided that women's reproductive rights came within the category of "personal liberty" under Article 21 of the Indian Constitution. Women's privacy, dignity, and physical integrity should be protected, which implies that no unjustifiable limits on women exercising their reproductive rights should exist.

In the case of Meera Santosh Pal v. Union of India,[4] a lady in the 24th week of pregnancy had filed a petition to undergo an abortion because of severe abnormalities in the foetus which could endanger her life. Supreme Court approved recommendations given by the medical board.

*In Sarmishtha Chakrabortty v. Union of India*[5], a lady asked the Supreme Court for permission to have an abortion. If the pregnancy is not terminated, the woman faces severe mental injury and if the child survives, it will need complex cardiac corrective surgery stage by stage, with high mortality and morbidity at each stage. So, the Supreme Court upheld the woman's petition and allowed her to have a medical abortion.

Further, in X *v. Union of India*[6], The Supreme Court determined that despite the petitioner's current pregnancy being around 24 weeks, the life of the foetus outside the womb was endangered and thus allowed the woman to undergo medical termination of pregnancy under the provisions of the MTP Act, based on a report submitted by the medical board directed to be formed.

However, the Supreme Court has refused to approve abortion in numerous situations because there seems to be no harm to the woman or the foetus. In the case of Savita Sachin Patil v. Union of India,[7] A lady in her 26th week of pregnancy sought a medical abortion from the Supreme Court. The medical board concluded that the woman's life was not in danger and that the foetus was "likely" to suffer mental and physical problems. The Supreme Court, thus, declined the request of the woman.

At glance, the table shows the comparison between old and new Act

Table

| SR. NO. | | MEDICAL TERMINATION OF PREGNANCY ACT 1971 | MEDICAL TERMINATION OF PREGNANCY AMENDMENT ACT 2021 |
|---|---|---|---|
| 1. | Indication (Contraceptive Failure) | Only applies to married women and not to unmarried | Both married and unmarried. covered |
| 2. | Gestational Age Limit | 20 weeks for all indication | 24 weeks for rape survivors Beyond 24 weeks for substantial foetal abnormalities |
| 3. | Medical practitioner opinion 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 |
| 4. | Breach of the women's confidentiality | Fine up to Rs 1000 | Fine and/or Imprisonment of 1 year |

Some issues involved in the new MTP ACT 2021 (amendments)

1. First and foremost, they still deny autonomy to those seeking abortions since the framework is not "rights-based".
2. The legislation does not enable a woman to choose her pregnancy, but rather limits her options to a few physicians and medical boards.
3. Utility of Act must see from metropolitan area to grass root level while taking decision for aborting foetus because it is impossible to take opinion of two doctors in rural area where there is scarcity for one qualified doctor.[8]
4. Act and the Drugs and Cosmetics Act, 1940. POCSO mandates that if a minor conceives, even though consensual sex (even though POCSO does not recognize consent of a person below 18 years), and wants to abort, the matter has to be reported to the police. The amended MTP law, though, largely guarantees privacy to the parties involved in abortion. It is said by

advocate Rastogi.

5. Medical abortion pills are Schedule H medications, which require a pharmacist to keep sales records under the Drugs and Cosmetics Act. An advocate claims this breached the MTP Act 2021's secrecy.

6. The statute makes no provision for pregnant women to receive financial or logistical assistance in order to appear before medical boards.

7. There is a specific ethical dilemma associated with abortions done after the 24-week limitation has expired when the pregnancy is ended by induction of labour. It requires injecting a chemical substance into embryonic tissue to avoid live births; nevertheless, if the foetus is born alive, the question of who will care for the child born.

8. The new Act doesn't mention trans gender people's abortion rights. "The wording employed in the MTP Act 2021 is exclusive: by utilizing the term "woman," it must take into account the fact that we now have the Trans gender Persons (Protection of Rights) Act, 2019. They may become pregnant by taking hormone.[9]

9. Abortion in India is still conditional and it is not on request because there are many issues involved in it for example sex determination etc.

## Conclusion

A new Medical Termination of Pregnancy Act is a ray of hope for safe abortion but there is a need to ensure "dignity, autonomy, confidentiality, and justice for women who need to terminate the pregnancy". A lot more is desirable.

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## Endnotes

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1 https://www.legalserviceindia.com/articles/adp_tion.htm)

2 https://www.drishtiias.com/daily-updates/daily-news-analysis/medical-termination-of-pregnancy-mtp-amendment-act-2021

3 (2009) 9 SCC 1

4 (2017) 13 SCC 436

5 (2018) 13 SCC 339

6 (2017) 3 SCC 458

7 (2017) 13 SCC 436

8 https://www.thehindu.com/news/national/parliament-proceedings-rajya-sabha-passes-the-medical-termination-of-pregnancy-bill/article34085993.ece

9 https://www.indiaspend.com/gendercheck/amended-abortion-law-still-gives-doctors-not-women-the-final-say-744747.