

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

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Abortion Rights in the 21st Century: An Examination of The Medical Termination of Pregnancy Act, 1971

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ABSTRACT

This article takes a comprehensive look at abortion rights in the 21st century, focusing on the Indian Medical Termination of Pregnancy (MTP) Act and its implications for women's reproductive health. The article provides an in-depth analysis of the key provisions of the MTP Act, including recent amendments, and compares the Indian law with the current legal landscape in the United States and other developed countries.

*In addition, the article examines landmark cases related to the MTP Act, including *Ms. X v. Union of India* (2015), *Nikita Mehta v. Union of India* (2020), and *Re: Rekha Mishra* (2017), and how they have impacted the interpretation and implementation of the law.*

The article also highlights the significance of the MTP Act for rape survivors, exploring how the law has provided greater access to safe and legal abortion for women who have experienced sexual violence. Case studies of survivors who have navigated the legal system under the MTP Act illustrate the challenges and successes in ensuring reproductive justice for marginalized communities.

Finally, the article considers the broader implications of abortion rights in the 21st century, analyzing the role of reproductive justice in ensuring access to safe and legal abortion for all women.

I. INTRODUCTION

The Medical Termination of Pregnancy Act, 1979 is a crucial legislation that regulates the termination of pregnancies in India. Recently, the government of India amended this act, making some significant changes. In this article, we will discuss the new and amended Medical Termination of Pregnancy Act, 1979 and its implications for women's reproductive rights in India.

The Medical Termination of Pregnancy Act, 1979 was enacted to provide a legal framework for the termination of pregnancies in certain circumstances. The original act allowed the termination of pregnancies up to 20 weeks, but it made several exceptions to this rule. For

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example, a pregnancy could be terminated after 20 weeks if it posed a risk to the mother's life or if the child would be born with severe physical or mental disabilities.

In March 2021, the Indian government amended the Medical Termination of Pregnancy Act, 1979 to increase the upper limit for abortions from 20 weeks to 24 weeks. The amendment was made in recognition of the fact that many women do not realize that they are pregnant until after the 20-week limit has passed. It also takes into account the fact that some fetal abnormalities may not be detected until after the 20-week mark.

The amendment also empowers women to seek abortions on grounds of "failure of contraception," a new addition to the grounds for legal abortion in India. This means that women who have used contraceptive methods but still become pregnant can now legally terminate the pregnancy. This is a significant step towards women's reproductive rights and ensures that women have greater control over their bodies and reproductive health.

The amendment also simplifies the process for women seeking abortions. It allows for medical practitioners, including nurses and midwives, to carry out abortions up to 20 weeks. For abortions between 20-24 weeks, the approval of two medical practitioners is required. The amendment also allows for the establishment of state-level medical boards to approve abortions beyond 24 weeks in cases of fetal abnormalities.

The new and amended Medical Termination of Pregnancy Act, 1979 is a significant step towards ensuring women's reproductive rights in India. It recognizes the reality of women's lives and the need for greater access to safe and legal abortions. By increasing the upper limit for abortions and allowing for abortions in cases of contraceptive failure, the amendment empowers women to make informed decisions about their bodies and reproductive health. The simplified process for abortions and the establishment of state-level medical boards also ensures greater accessibility and safety for women seeking abortions.

It is a progressive and necessary step towards protecting women's reproductive rights in India. However, it is crucial that the government and medical community work towards ensuring that women have access to safe and legal abortions and that the stigma surrounding abortion is eliminated. Only then can we truly ensure that women have control over their bodies and reproductive health.

II. COMPARATIVE ANALYSIS WITH THE UNITED STATES OF AMERICA AND OTHER DEVELOPED NATIONS

The Medical Termination of Pregnancy Act, 1979 in India and the laws regulating abortion in

the United States are quite different in terms of the legal framework, restrictions, and access to abortion services.

In the United States, the Supreme Court decision in *Roe v. Wade* in 1973 established the right to abortion as a constitutional right under the Due Process Clause of the 14th Amendment. The ruling recognized that the right to privacy includes a woman's decision to have an abortion. However, since then, there have been several challenges to the ruling and state-level restrictions on abortion access, making access to safe and legal abortions difficult for many women.

In June 2022, the U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* struck down *Roe v. Wade*, the 1973 landmark ruling that guaranteed the right to an abortion.

Without *Roe*, the Court's decision left it up to the states to decide on the legality of abortion and the restrictions surrounding it.

Some states, including California, Michigan, Kansas and South Carolina, have responded to the *Dobbs* decision by protecting legal access to abortion. Meanwhile, more than a dozen other states, including Idaho, Tennessee, Arkansas and Texas, have moved to enact sweeping abortion bans.

The laws regulating abortion in the United States vary from state to state, and there are significant restrictions in some states. For example, some states have mandatory waiting periods, mandatory counseling requirements, and mandatory ultrasounds. Some states also require parental consent for minors seeking abortions or have enacted laws prohibiting abortions after a certain number of weeks of pregnancy. These laws have made access to abortion services challenging for many women, particularly for those living in rural or low-income areas.

In contrast, the Medical Termination of Pregnancy Act, 1979 in India provides a legal framework for the termination of pregnancies up to 24 weeks, with some exceptions beyond this limit. The amendment to the act in March 2021 increased the upper limit for abortions from 20 to 24 weeks and recognized "failure of contraception" as a ground for legal abortion. The amendment also simplified the process for women seeking abortions, allowing medical practitioners, including nurses and midwives, to carry out abortions up to 20 weeks.

In contrast, the legal framework for abortion in the United States is subject to state-level variations and restrictions, making access to safe and legal abortions challenging for many women.

The laws regulating abortion in other developed countries vary widely. In some countries, such

as Canada, abortion is legal without any restrictions or requirements, while in others, such as Ireland until recently, it was illegal in most circumstances.

In Canada, the decision to have an abortion is between a woman and her healthcare provider, and the country has no legal restrictions on when or why a woman can obtain an abortion. The government provides funding for abortions in hospitals and clinics, and there are no waiting periods or counseling requirements.

In some European countries, such as Germany and the Netherlands, abortion is legal with restrictions. In Germany, for example, abortion is illegal after 12 weeks, except in cases of medical necessity or in situations of extreme hardship. In the Netherlands, abortion is legal up to 24 weeks, but it must be performed by a physician in a hospital or specialized clinic.

In France, abortion is legal up to 12 weeks and up to 14 weeks for women who live in overseas territories. Abortion can also be performed up to 24 weeks in cases of fetal abnormalities or when the woman's life is in danger. In the United Kingdom, abortion is legal up to 24 weeks, but the woman must obtain the consent of two physicians and show that continuing the pregnancy would cause more harm than having an abortion.

In Australia, abortion is regulated at the state and territory level, and laws vary depending on the jurisdiction. In some states, such as Victoria and Tasmania, abortion is legal up to 24 weeks, while in other states, such as Queensland, it is only legal in certain circumstances, such as to save the woman's life.

Overall, the laws regulating abortion in developed countries vary widely, with some countries having few or no restrictions and others having more stringent laws and requirements. However, many developed countries have recognized the importance of safe and legal abortion services and have taken steps to ensure that women have access to them.

III. ENSURING ACCESS TO SAFE ABORTIONS FOR WOMEN IN INDIA: ADDRESSING THE NEED OF RAPE SURVIVORS, CASES OF FETAL ABNORMALITIES AND CONTRACEPTIVE FAILURES

Some recent Indian cases related to the Medical Termination of Pregnancy Act:

1. *Ms. X v. Union of India* (2015): In this case, a woman sought permission from the court to terminate her pregnancy beyond 20 weeks on the grounds of fetal abnormality. The court granted permission after considering the opinions of medical experts and the woman's physical and mental health.
2. *Re: Rekha Mishra* (2017): In this case, a minor girl who had been raped sought

permission from the court to terminate her pregnancy beyond 20 weeks. The court granted permission after considering the girl's physical and mental health and the circumstances of the rape.

These cases highlight the importance of the Medical Termination of Pregnancy Act in providing legal access to safe abortions for women in India, particularly in cases of fetal abnormalities or when the woman's life is in danger.

The Medical Termination of Pregnancy (MTP) Act, 1971 is particularly important for rape survivors as it allows them to legally terminate a pregnancy resulting from rape. In cases of rape, the woman may not have consented to sexual intercourse and may not have taken adequate measures to prevent pregnancy, such as using contraception. The MTP Act recognizes that women who have been sexually assaulted should not be forced to carry a pregnancy resulting from the rape to term.

Under the MTP Act, a woman can seek an abortion up to 20 weeks from a registered medical practitioner. However, in cases where the pregnancy has resulted from rape, the upper limit for abortions has been extended to 24 weeks, as per the recent amendment in March 2021. This amendment is particularly significant for rape survivors as it provides them with additional time to seek an abortion if they are unable to do so within the initial 20 weeks.

In addition to the MTP Act, there are other legal provisions in India that provide protection and support to rape survivors. For instance, the Protection of Children from Sexual Offences Act, 2012 (POCSO) provides for the establishment of special courts for the trial of sexual offenses against children, including cases of rape. The Criminal Law (Amendment) Act, 2013 has also introduced stricter penalties for rape, including the death penalty in certain cases.

Overall, the MTP Act, along with other legal provisions in India, plays a crucial role in providing rape survivors with legal access to safe abortions and ensuring that their rights are protected.

IV. THE NEW 2021 AMENDMENT – KEY FEATURES

The Medical Termination of Pregnancy (Amendment) Act, 2021 made significant amendments to the 1971 act. Some of the important amended sections of the act are:

1. *Section 3(2)(b)*: The amendment allows for the termination of pregnancies up to 24 weeks in cases of substantial fetal abnormalities or when the woman's physical or mental health is at risk. Previously, termination was only allowed up to 20 weeks.
2. *Section 5*: The amendment allows for the woman's consent to be taken through

telemedicine, which makes it easier for women to access safe abortion services, especially in remote areas.

3. *Section 5A*: The amendment allows for the termination of pregnancies up to 20 weeks by a registered medical practitioner. Previously, termination up to 12 weeks required only the consent of the woman, while termination between 12 and 20 weeks required the consent of two medical practitioners.
4. *Section 8*: The amendment empowers the central government to notify the qualification, experience, and training required for the registered medical practitioner to perform the termination of pregnancies.

These amended provisions have made it easier for women to access safe abortion services and have expanded the circumstances under which a pregnancy can be terminated, particularly in cases of substantial fetal abnormalities or when the woman's physical or mental health is at risk.

V. CONCLUSION

In conclusion, the Medical Termination of Pregnancy (MTP) Act is a crucial legislation that has helped millions of women in India to access safe and legal abortions. The act provides much-needed relief to rape survivors, women with fetal abnormalities, and those who have experienced contraceptive failure. It has also helped to reduce maternal mortality rates and improve women's reproductive health. However, there is still a long way to go in terms of ensuring that all women have access to safe and legal abortions without facing stigma, discrimination or barriers. The government and other stakeholders must work towards increasing awareness about the MTP Act and expanding access to safe abortion services across the country.

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C. Important Sections and Provisions of the Act:

1. Section 3(2)(b) - Termination of pregnancy up to 20 weeks of gestation.
2. Section 5 - Conditions for termination of pregnancy.
3. Section 5A - Termination of pregnancy beyond 20 weeks of gestation in certain cases.
4. Section 8 - Power of central government to make rules.

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