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ABSTRACT

The Constitution of India provides certain fundamental rights to each and every citizen of our country. Under article 21 of the Indian Constitution 'Right to life' is also a fundamental right provided to every citizen. Being a democratic country India provides every one with the rights and choices that they want to make. Right to abortion is not just a fundamental right but also a human right. Each and every woman has the right to make choices and decisions of her own. Right to abortion is one such right and choice provided to the woman. The legislature has framed a statute for the protection of the woman from unsafe abortions. This statute is known as The Medical Termination of Pregnancy Act, 1971. This Act regulates the conditions under which a pregnancy may be aborted. And this bill also increases the time period for abortion to be carried out. Women has the right of abortion but with a limitation and this limitation has caused not only serious social, legal but as well as reproductive health issue in women especially about their right for safe abortion. Currently, if abortion is done within 12 weeks of conception then it requires the opinion of one doctor and if it is done between 12 and 20 weeks then it requires two doctors. And if a pregnancy has to be terminated after 24 weeks in cases of substantial foetal abnormalities then the Bill sets up state level Medical Boards to decide it. Termination is permitted only when continuance of the pregnancy would involve a risk to the life of the pregnant women. This research article mainly focuses on medical termination of pregnancy. And this paper critically reviews the history of abortion law and policy in India and research on abortion service delivery.

KEYWORDS: legislature, limitation, conception, abnormalities, fundamental rights, citizen.

INTRODUCTION

According to ²Cambridge Dictionaries abortion means "the intentional ending of a pregnancy"

According to ³Oxford Dictionaries abortion means "The deliberate termination of a human pregnancy, most often performed during the first 28 weeks"

¹ Article 21: Understanding The Right to Life and Personal Liberty From Case Laws- Academike Explainer <[art 21 of Indian constitution - Search](#)> Accessed August 12, 2021.

²Meaning of abortion in English <[acc to Cambridge dictionary abortion means - Search](#)>.

According to the ⁴World Health Organization (WHO), abortion is defined as “a pregnancy termination prior to 20 weeks’ gestation”.

Thus, from the above definition we observed that abortion is when a pregnancy is ended so that it doesn’t result in the birth of a child.

Accidental abortion is known as miscarriage, and intended form of abortion is called induced abortion. Fetus is being removed when it has the potential to survive in the outside environment. In developed countries it has been allowed under certain conditions and also is done using modern techniques which are totally safe. The sooner the abortion is done, the less pain and risk it is. For this, information about possible pregnancy can be obtained within 10 days by doing urine test. ⁵**The main methods of abortion are as follows:**

- 1. K. MVA Technique-** Before six weeks, you can get pregnant with a vacuum pump. Therefore, the neck does not have to be numbed. After this, curating does not even have to be done.
- 2. Curating aka D.N.C. Method-** This method can be used for 6-12 weeks. In this method, the inner womb is removed by a vacuum pump by expanding the cervical canal. For this, only that area has to be numbed by injection. When the fetus is removed, the lining of the uterus is scraped out. After this type of abortion, you have to stay in the hospital for 3-4 hours. This abortion is done free of cost in government hospitals. In private hospitals, it can cost up to 2-4 thousand. This method is absolutely safe and reliable. But there is a slight danger in it. Side effects such as bleeding or swelling in the womb are possible
- 3. Abortion by drug-** Pregnancy is aborted with Prosta gladin medicine for 12-20 weeks. This medicine is spread through a tube around the womb lining in the uterus. Due to the burning of the uterus by this medicine, the pregnancy falls in 2-3 days. There may be some excess discharge during this process. If this does not lead to abortion, then the womb is scraped out by surgery. But this adds to the cost and pain. It is always better to have an abortion earlier than at 12-20 weeks. Use this method only if there is no other way.
- 4. RU-486-** This ritual is for 6-8 weeks. This is called the abortion pill. The second pill is to be taken 2 days after the first pill. Bleeding starts from the uterus from the first pill and pain starts in the uterus from the second pill. After this, abortion occurs in 6-8 hours. Sometimes

³ Definition of abortion noun from the Oxford Advanced Learner's Dictionary <[acc to oxford dictionary abortion means - Search](#)>.

⁴ <[What Is Abortion According to WHO?](#)>

⁵ <[The Different Types of Abortions - Abortion Methods](#)>

curating has to be done after that. Never do this treatment on your own without medical advice.

Ethical, State and religious views on abortion vary from place to place. In several regions, the act is allowed in certain situations like rape, biological problems, in case the woman's life is endangered, or incest. However, abortion has remained a debatable issue morally, ethically and legally. Though the World Health Organization has recommended safer and lawful methods of abortion and some States even legalized it now but earlier abortion was not even allowed, whether voluntary or involuntary. After the case of **Roe V. Wade 410US 113(1973)** abortion was made legal and was also considered as one of the essential right under ⁶fundamental right. Before Medical Termination of Pregnancy Act, 1971, the law relating to abortion was dealt under section 312 to 316 of Indian Penal Code.

According to ⁷ section 312 of Indian Penal Code, 'Abortion means, 'Whoever voluntarily causes a woman with child to miscarry shall, if miscarriage be not carried in good faith for the purposes of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both, and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine"

Thus, under Indian Penal Code, no women can claim abortion as a matter of Right. Only therapeutic abortion was allowed. And because of which mortality rate of the mother has increased during that time due to illegal and unsafe abortion. So, to control the illegal abortion new law relating to abortion was introduced i.e. ⁸Medical Termination of Pregnancy Act, 1971. Section 3 of the Medical Termination of Pregnancy Act, laid down the grounds where abortion can be performed.

SOCIETY AND CULTURE

Induced abortion has long been the source of much debate. The ethical, philosophical, biological, religious and legal issues surrounding abortion are related to value systems. Abortion opinions can be about fetal rights, government rights, and women's rights.

⁶Ipleaders, Intelligent Legal Solutions, Fundamental Rights in the Constitution of India < [Fundamental Rights under the Indian Constitution](#) > Accessed May 7, 2019.

⁷ aaptaxlaw.com, Section 312 IPC Causing Miscarriage < [IPC 312 | Causing miscarriage | 312 Indian Penal Code 1860](#) >.

⁸ MINISTRY OF HEALTH & FAMILY WELFARE, DEPARTMENT OF HEALTH & FAMILY WELFARE, MTP ACT, 1971 < [MTP ACT, 1971 | Ministry of Health and Family Welfare | GOI](#) >.

In both public and private debates, arguments for induced abortion were presented in favor of either the moral acceptability of abortion, or to support laws prohibiting or prohibiting abortion. The World Medical Association Declaration on Medical Abortion states, "The circumstances present a dilemma in bringing a mother's interest in conflict with the interests of her unborn child and raise the question of whether the pregnancy should be intentionally terminated." "Abortion debates, especially those relating to abortion laws, are often led by groups advocating for one of these two positions. Anti-abortion groups, which support more legal restrictions on abortion, including outright prohibition, often describe themselves as "pro-life", while abortion rights groups, which are against such legal restrictions, describe themselves as "pro-life". This is called an "enabled option". Generally, the former position argues that a human fetus is a human being with the right to live, making abortion morally the same as murder. The latter position argues that a woman has certain reproductive rights, specifically the choice whether or not to conceive for a period.

OBJECTIVES OF MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The preamble of the Medical Termination of Pregnancy Act, 1971 read as follows- "An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto"

Preamble clearly shows the objective of the Medical Termination Act. That only certain pregnancy will be allowed to terminate under MTP Act. Safe abortion was available to women after the Act.

CONDITIONS FOR TERMINATION OF PREGNANCIES

With regard to allowing abortions there are two different opinions. One opinion is that terminating a pregnancy should be the choice of a pregnant woman, and a part of her reproductive rights. The other opinion is that, to protect life the state has an obligation, and hence should provide for the protection of the foetus. Across the world, countries have set conditions and time limits for allowing abortions based on the risk to the pregnant woman.

For example, in UK, abortion can be done at any time:

- To protect the life of the woman
- To prevent physical injury or mental health of the woman
- Or if the child is at risk of being handicapped.

In South Africa, a pregnancy may be terminated up to 12 weeks at the request of the woman.

And also between 12 to 20 weeks if:

- It poses a risk to the physical or mental health of woman,
- There is a risk of foetal abnormalities
- It was caused due to rape.

According to a study about 60% of the countries in the world require authorizations by at least one health care provider to undergo an abortion.

MAJOR PROVISIONS OF MTP AMENDMENT ACT

1. **Termination due to failure of contraceptive method or device:** Under the Act, pregnancy up to 20 weeks can be terminated by a married woman in case of failure of the contraceptive method or device. The bill also allows unmarried women to terminate a pregnancy due to failure of a contraceptive method or device.
2. **It is necessary to consult a doctor for termination of pregnancy:** Termination of pregnancy up to 20 weeks of pregnancy requires the opinion of a registered medical practitioner. For termination of pregnancy up to 20-24 weeks of pregnancy, the opinion of two registered doctors will be necessary. In case of serious fetal abnormality, it will be necessary to take the opinion of the state-level medical board for termination of pregnancy after 24 weeks.
3. **Maximum gestational limit for special categories:** Provision has been made to increase the limit of gestation period from 20 to 24 weeks for special categories of women (including women victims of rape and incest and other vulnerable women such as disabled women and minors etc.).
4. **Privacy:** The name and other particulars of a woman who terminates the pregnancy shall not be disclosed to anyone except a person authorized in the present law.

PLACE WHERE PREGNANCY MAY BE TERMINATED

No termination of pregnancy shall be made in accordance with this Act at any place other than –

- a) A hospital established or maintained by Government, or
- b) A place for the time being approved for the purpose of this Act by Government.

CONSENT FOR ABORTION

⁹ PRS LEGISLATIVE RESEARCH, The Medical Termination of Pregnancy (Amendment) Bill, 2020, Ministry: Health and family welfare<[The Medical Termination of Pregnancy \(Amendment\) Bill, 2020](#)>.

Section 3(4) of MTPA clarifies as to whose consent would be necessary for termination of pregnancy.

- a) No pregnancy of a woman, who has not attained the age of 18 years, or who having attained the age of 18 years, is a lunatic, shall be terminated except with the consent in writing of her guardian.
- b) Save as otherwise provided in cl (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

It is important to note, in this section, that the consent of the woman is the essential factor for termination of her pregnancy. The husband's consent is irrelevant. Therefore, if the woman wants an abortion but her husband's objects to it, the abortion can still be done. However, if the woman does not want an abortion but her husband wants, it cannot be done. However, the consent of the guardians is needed in the case of minors or lunatics.

CONCLUSION

In this research article, it is concluded that abortion rights should be given to every woman. At a time when some countries are attempting to repeal medical termination of pregnancy laws, India has managed to retain and constantly develop the law surrounding medical termination of pregnancy.