

Analysis of the Medical Termination of Pregnancy (MTP) Act 2021: Indian Law, Amendments, and the Rights of the UnbornDr Khushpreet Kaur ¹ Dr Sunny Basra ^{2*} Dr Nishu Dihana

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Abstract

The Medical Termination of Pregnancy (MTP) Act, first enacted in 1971, marked a pivotal moment in Indian reproductive health legislation by legalizing abortion under defined circumstances to reduce unsafe practices. The 2021 amendment sought to expand access, raising the upper gestational limit from 20 to 24 weeks for specific vulnerable categories of women, recognizing the reproductive autonomy of unmarried women, and eliminating spousal consent requirements. Despite these advances, recent judicial interpretations, particularly the Supreme Court's 2024 refusal to permit termination of a 30-week pregnancy, underscore the ongoing tension between reproductive rights and the rights of the unborn. This review critically examines the historical evolution, amendments, and current provisions of the MTP Act in light of global legal frameworks. It highlights persisting lacunae, including inadequate recognition of mental health grounds, bureaucratic hurdles in late-term abortions, definitional ambiguities regarding fetal abnormalities, and limited public awareness. Comparative insights from jurisdictions such as the United States, United Kingdom, France, and Germany illustrate diverse approaches to balancing women's autonomy and fetal viability. The analysis concludes that while the MTP Amendment 2021 represents progressive reform, further refinements are essential to ensure reproductive justice. Policy recommendations include recognizing psychological distress as a valid ground beyond 24 weeks, streamlining Medical Board procedures, enhancing public awareness, and harmonizing Indian law with international best practices. By situating the Indian experience within a broader ethical and legal discourse, this review underscores the need for a more nuanced, rights-based approach to abortion regulation.

Keywords: Medical Termination of Pregnancy Act, Abortion Law, Reproductive Rights, Fetal Rights, India, MTP Amendment 2021

Introduction

The Medical Termination of Pregnancy (MTP) Act was first enacted in India in 1971 to legalize abortion under specific conditions, primarily to protect women's health and reduce unsafe abortions. Over the years, amendments have been made to the Act to align it with medical advancements and societal needs. The most recent amendment in 2021 extended the gestational limit for termination under certain conditions and introduced changes to ensure better accessibility to safe abortion services.[1]

Historical Background and Amendments in the MTP Act

Medical Termination of Pregnancy (MTP) Act, 1971, was a milestone legislation in India that legalized abortion up to 20 weeks of pregnancy on certain grounds such as risks to the life of the mother, fetal abnormalities, pregnancies due to rape or incest, and failure of a contraceptive in married women. The Act required one medical practitioner's opinion for abortions up to 12 weeks and two medical practitioners' consent for procedures performed between 12 and 20 weeks. [2] The MTP amendment Act of 2021 introduced major amendments to consolidate reproductive rights and access to safe abortion services. The amendment raised the upper gestational limit from 20 to 24 weeks for special categories of women such as rape survivors, incest survivors, and differently-abled women. It also permitted unmarried women to undergo abortion on grounds of failure of a contraceptive, thus increasing reproductive autonomy. The amendment also provided for Medical Boards to assess and permit abortion beyond 24 weeks in cases of extreme fetal abnormalities and other clauses. The most important change was the abolition of the requirement of the husband's consent,

upholding a woman's right to make independent choices regarding her reproductive health. [3]

Case Study: Supreme Court's Rejection of a 30-Week Pregnancy Termination Plea

In 2024, the Supreme Court of India established a significant legal precedent by rejecting a plea to terminate a 30-week pregnancy during the hearing of a Special Leave Petition against a judgment from the Delhi High Court. The case involved a woman who sought an abortion at an advanced stage due to psychological distress. A bench consisting of Justices B.R. Gavai, Sandeep Mehta, and SVN Bhatti ruled against the plea, highlighting the rights of the unborn child and the legal gestational limits set by the MTP Act. The court noted that at 30 weeks, the fetus was viable and had a right to life, thereby reinforcing the legal restrictions on late-term abortions. The judgment sparked debates regarding reproductive rights versus fetal rights, bringing focus to the ethical and moral complexities of late-term abortions. The case also highlighted the restrictive nature of the 24-week limit, questioning whether psychological distress should be considered a valid reason for termination beyond this gestation period.[4]

Rights of the Unborn: Legal Views and Moral Consequences

The rights of the unborn have been a highly debated topic around the world. In India, the legal system does not equate fetal rights with personhood; however, the Supreme Court's decision in the case mentioned raises important questions about the legal status of fetuses beyond the point of viability.[5] Indian law permits abortion up to 24 weeks for certain categories but does not address fetal rights beyond this timeframe, except in instances of fetal

anomalies. In comparison, U.S. law following the *Dobbs v. Jackson Women's Health Organization* (2022) decision allows states to regulate abortion according to their own policies.[6] Meanwhile, European countries like Germany acknowledge fetal rights from the moment of conception, permitting abortion only under stringent conditions. The balance between a woman's right to make decisions about her body and the rights of the fetus presents a complex moral issue. Although reproductive autonomy is a core principle, the question of fetal viability raises ethical concerns regarding late-term abortions.[7]

Lacunae in the MTP Amendment 2021

Despite its progressive stance, the MTP Amendment 2021 has notable shortcomings:

1. **Exclusion of Mental Health Considerations:** The Act does not comprehensively address psychological distress as a standalone criterion for abortion beyond 24 weeks. [8]
2. **Complex Approval Process for Late-Term Abortions:** Medical Boards required for approvals beyond 24 weeks introduce bureaucratic delays, potentially compromising timely medical intervention.
3. **Ambiguity in Defining 'Substantial Fetal Abnormalities':** The law lacks a clear definition, leaving scope for subjective interpretation.[9]
4. **Lack of Public Awareness and Accessibility:** Many women, particularly in rural areas, remain unaware of their reproductive rights due to inadequate dissemination of information.[10]

Comparison with International MTP Laws

1. **United States:** Abortion laws in the U.S. differ significantly from state to state after the reversal of *Roe v. Wade* in 2022. Some states permit abortions until the point of viability, which is around 24 weeks, while others have enacted near-total bans. For instance, states like California and New York allow abortions under a wider range of circumstances, whereas Texas and Alabama have implemented very strict regulations. [6]
2. **United Kingdom:** The UK Abortion Act of 1967 allows for abortions up to 24 weeks, with exceptions made for serious fetal abnormalities or risks to the mother's health after this timeframe. The procedure must be approved by two medical professionals, and abortion services are generally accessible through the National Health Service (NHS). [11]
3. **France:** France permits abortion on demand for up to 14 weeks, which is shorter than India's 24-week limit. After 14 weeks, abortions are allowed only under specific medical circumstances, such as fetal abnormalities or threats to the mother's health, and require approval from medical experts.[12]
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Conclusion and Recommendations

The MTP Amendment 2021 represents a step forward, yet it still falls short in tackling

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the psychological and social intricacies surrounding abortion. The Supreme Court's decision regarding the plea for terminating a pregnancy at 30 weeks highlights the necessity for a more nuanced approach that balances women's rights with considerations of fetal viability. Future reforms should focus on:

- Recognizing mental health as a valid criterion for abortion beyond 24 weeks.
- Streamlining the approval process for late-term abortions.
- Enhancing awareness and accessibility to MTP services.
- Aligning Indian abortion laws with global best practices to uphold reproductive justice.

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