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MEDICAL TERMINATION OF PREGNANCY: AN ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT BILL, 2021)”

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ABSTRACT

“Abortion is health care. Abortion is freedom. Abortion is bodily autonomy. A country without this human right is not a free country.”, H.R. Bellicosa a feminist author highlights the theme of this critical essay. The essay initiates with the historical background of the “Medical Termination of Pregnancy Act 1971 to the present Medical Termination of pregnancy (Amendment Bill, 2021)”, citing a great deal of enhancement though leaving space for amelioration. The essay further highlights the concepts of medical termination and salient features of the new amendment, comparative analysis with countries like Netherlands and the United States of America followed by a judicial analysis of medical termination in India. The essay presents a critical analysis of the new amendment bill, pointing the loopholes in the act such as lack of specialized doctors in rural areas, persistent control of state over women’s autonomy followed by rational recommendations that could be incorporated to make the act more comprehensive and efficient. The essay also includes various statistical data and graphs proving the lack of implementation and the ground realities of the abortion rights in India. Thus, the shackles of ethical morality and the patriarchal society needs to be reformed with a reform in the act which is further discussed in the essay.

1. INTRODUCTION AND BACKGROUND

In the 21st century, where Indian spacecraft has alighted on the moon, an 18 year old has reached finals of the world chess championship, India has marked its way to being a celebrated, exigent and accelerated economy and society at large. In spite of the triumph, there is still persistence of evils such as the religious parley, judicial biases, political reactionaries, polarity of ethics and morality in regards to legalizing medical termination of pregnancy in other words abortion. Although India has progressed from criminalization of abortion under Section 312 before 1971 to the “Medical Termination of Pregnancy Act 1971 (MTP 1971) followed with multiple amendments and then the implementation of the awaited Medical Termination of pregnancy (Amendment Bill, 2021),” citing a great deal of enhancement though leaving space for amelioration as discussed in this critical essay.

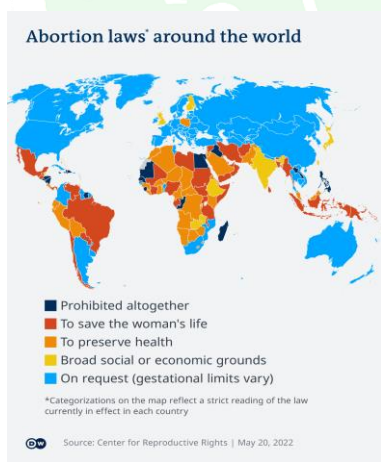
Parameter	MTP Act, 1971	MTP Act, 2021
Contraceptive Failure	Married Women can avail	Both Married & Unmarried Women can avail
Limit of Gestation	Upto 20 weeks	Upto 24 weeks
Opinion of Doctor	1 RMP – 12 weeks 2 RMP – 20 weeks	1 RMP – 20 weeks 2 RMP – 24 weeks
Foetal Abnormalities	20 weeks limit on gestation	No limit on gestation

The above figure demonstrates the difference between the MTP 1971 and MTP Amendment 2021 act to get a broader conception.

2. CONCEPT/THEORY

“According to the United Nations Population Fund (UNFPA)’s State of the World Population Report 2022 *Unsafe abortions are the third leading cause of maternal mortality in India,*

and close to 8 women die from causes related to unsafe abortions each day. Between 2007–2011, 67 per cent of abortions in India were classified as unsafe.⁹⁴³ Interpreting the Medical Termination of pregnancy (Amendment Bill, 2021), some key features of the act were allowing unmarried women for termination, increase of gestational period from 20 to 24 weeks for special categories, inclusion of confidentiality clause etc making it a progressive act. While comparatively analyzing, women in the **Netherlands** have the right to terminate a pregnancy till the 24th week of pregnancy as opposed to Indian laws where pregnancy may be terminated till 20th week of pregnancy and above that with different regulations required. On the other side, countries like **United States of America**, with the overturning of **Roe vs Wade**, the decision dismantled the right to safe abortion resulting in backlash and protests making the position of India with protection of women’s health as more liberal and superior.



The above figure highlights the abortion laws around the world and with a closer look one can see that India is categorized under Broad social or economic growth

3. LEGISLATIVE AND JUDICIAL ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY IN INDIA

A] Law Committees and Commission Reports

It is imperative to highlight **Shantilal Shah Committee in 1964** that led a comprehensive

review of the then socio-legal moral with emphasis on the health of the women and drafted certain suggestions which were later accepted by the Parliament and came through as “The Medical Termination of Pregnancy Act, 1971.” The Committee report even in 1966 suggested protection of the sexual, physical and mental health of women which marks progression as compared to other nations with improvements with the succeeding rules and amendments. The **42nd Law Commission Report** recommended Section 312 should be amended to include a provision stating that producing miscarriage is not a crime if done by a registered medical practitioner with the agreement of a woman who has not been pregnant for more than three months.

B] Laws regarding Medical termination of pregnancy in Indian perspective

“**Section 312- 316** entails causing miscarriages without the consent of the woman bearing the child, causing the death of such woman while causing miscarriage, preventing a child from being born alive or causing its death after birth, and causing such death by act amounting to culpable homicide are all criminal offences under the Indian Penal Code, 1860.”⁹⁴⁴ These provisions are paradoxical and regressive, compelling drafters to add “**Section 3 of the (MTP 1971)** states that the above-mentioned practitioners are not guilty of the violations listed in the Indian Penal Code, 1860, or any other legislation if they terminate pregnancies in accordance with the Act’s provisions”⁹⁴⁵. The Constitution of India also guarantees protection of women’s autonomy, freedom and health under various articles such as **Article 14, 19, 21** etc.

C] Judicial Pronouncements

“In the recent judgment of “**X vs. Principal Secretary health & Family welfare dept**, the Supreme Court, said that unmarried and single

⁹⁴³ UNFPA https://india.unfpa.org/sites/default/files/pub-pdf/1_key_insights_india_final_web.pdf (Last visited Sept 19 2023).

⁹⁴⁴ The Indian Penal Code, 1860, § 312-316, No. 45, Acts of Parliament, 1860 (India).

⁹⁴⁵ The Medical Termination of Pregnancy Act, 1971 § 3, No. 34, Acts of Parliament, 1971 (India).

women whose pregnancy is between 20 to 24 weeks will also have the right to abortion like married women. The Court said that not allowing unmarried women the right to abortion between 20 to 24 weeks is a violation of the right to equality before law under Article 14 of the Constitution. It also ruled that under the Medical Termination of Pregnancy Act or MTP Act, rape would include marital rape as well. This means, if a woman has non-consensual sex with her husband, she has the right to undergo abortion.⁹⁴⁶ This judgment was applauded for its progressive approach with evolving society.

But on the other hand, judgment of "**Niketa Mehta V. Union of India**", the Bombay High Court refused to allow the abortion of a 24 (twenty-four) week old fetus which had a congenital heart defect. The Supreme Court also upheld the decision of the Bombay High Court. The case led to a heated debate on the law prohibiting abortions after 20 (twenty) weeks and the grim realities of bringing up a child which would never be able to have a normal life. However, this case also prompted the government to take cognizance of the lacunas in the MTP Act and announce that it will be reconsidering the law on abortion.⁹⁴⁷

"The Supreme Court in the case of **Suchita Srivastava & Anr v. Chandigarh Administration (2009)** held that a woman has the right to make reproductive choices and that it comes under the ambit of Article 21 of the Indian Constitution.⁹⁴⁸ "The Apex Court in the case of **Justice K. Puttaswamy v. Union of India and others (2017)**, opined that a woman has the right to make choices relating to her reproductive health and related matters."⁹⁴⁹

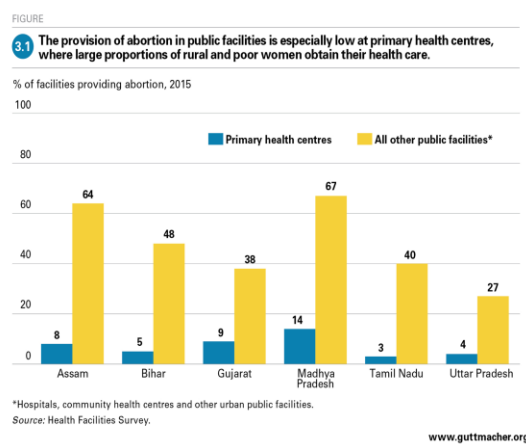
4. "CRITICAL ANALYSIS OF THE TOPIC"

"The Medical Termination of Pregnancy (Amendment Bill 2021)," though is progressive in

nature, still is embodied with impediments as analyzed below-

A] Lack of specialized doctors in the rural areas:

It is imperative to note that the specified act mandates that abortions be done only by professionals trained in gynecology or obstetrics. Pregnant women may continue to face difficulty accessing safe abortion facilities due to a 75% deficit of such doctors in community health centers in remote areas.



The above figure highlights the low provisions of abortion facilities available in Indian States in the year 2015, pointing to the inefficiency of the government

B] The presence of the writ petition after 24 weeks in case of fetal abnormality:

The act authorizes abortion after twenty-four weeks only if the state medical board has detected a significant fetal abnormality or in the case of rape/incest victims. This, too, is only achievable through a writ petition. This would also increase the number of illicit abortions. Only after 20 weeks are the defects obvious, providing a minimal period for abortion. People will strive to defy the law in such a circumstance.

C] A women's bodily autonomy still resting with the state:

This act does not give full autonomy to the women to terminate pregnancy and the state still has mandate and authority over women's personal choice, contradicting the whole

⁹⁴⁶ X vs. Principal Secretary health & Family welfare dept, Civil Appeal No 5802 of 2022.

⁹⁴⁷ Neha Madhiwalla, "The Niketa Mehta: Does the right to abortion threaten disability rights?" (2016) 5 (4) *Indian Journal of Medical Ethics*, 152.

⁹⁴⁸ *Suchita Srivastava & Anr v. Chandigarh Administration (2009)* 9 SCC 1.

⁹⁴⁹ *Justice K. Puttaswamy v. Union of India and others AIR 2017 SC 4161.*

scenario of progression. Thus, women's bodily autonomy should be prioritized than the law and amendments should be made to make women's health as the focal point.

D] Overlapping with POSCO act:

"Doctors are frequently caught in the conflicts and misunderstandings produced by the overlapping of the MTP Act, 1971 and the POCSO Act, 2012 in circumstances of minor pregnancy induced by sex felonies like as rape."⁹⁵⁰ "A close examination of the Acts reveals that the confidentiality clause 383 of the MTP Act requires medical practitioners to protect the patient's identity, whereas the POCSO Act, 2012 requires anyone who witnesses a sexual act involving a child under the age of eighteen to report it to the special juvenile police unit or the local police, failing which they may be prosecuted."

E] Medical board to decide termination only in certain cases:

"As a result, "the period for terminating a pregnancy beyond twenty-four weeks will be extended only in cases where a Medical Board determines that there is a significant fetal abnormality giving space for unjust and corrupt practices at times.""

5. CONCLUSION AND RECOMMENDATIONS

Few recommendations to make the Medical Termination of Pregnancy (Amendment Bill, 2021) more effective have been listed below-

1] Special courts for such cases:

It is imperative to note that such cases of medical termination need fast track and speedy delivery of justice. Thus, instituting quasi-judicial forums or tribunal would be a more efficient, focused and secured approach to tackle the problem of pending cases.

2] Conditions for writ petitions to be eliminated:

The act authorizes abortion after twenty-four weeks only if the state medical board has detected a significant fetal abnormality or in the case of rape/incest victims. This, too, is only achievable through a writ petition. This would also increase the number of illicit abortions. Only after 20 weeks are the defects obvious, providing a minimal period for abortion. People will strive to defy the law in such a circumstance. In such a circumstance, the legislation should be more accommodating of such cases, and the writ petition conditions should be eliminated. It must be recognized that the role of the courts in judging whether or not a woman should be able to afford an abortion must be curtailed.

3] Lowering of qualification of doctors for performance of termination for safer abortion in rural areas:

As demonstrated through different statistical reports, it is clear that the rural areas have lack of qualified doctors with specialization mentioned in the act thus enabling as a barrier to abortion leading to unsafe procedures. Thus, the government can either increase the number of specialized doctors in the rural region or reduce the level of specializations of doctors to enable more secured terminations.

4] Increased social awareness regarding the act:

It is noted that most women in the country have no knowledge about the gestational period, number of weeks allowed for termination, or the amendments in the act refuting the whole purpose of the law, thus spreading awareness through discussions, movie screenings at the grass root level will be more effective.

In conclusion, does "the Medical Termination of pregnancy (Amendment Bill, 2021)" guarantee basic human and fundamental rights of health to women in our country? Answer to this would be No, though there has been some progression. There is no denying that the

⁹⁵⁰Ambika Gupta, *A Critical Analysis of the Shortcomings under the MTP (Amendment) Act, 2021*, 1, VISHWAKARMA UNIVERSITY LAW JOURNAL, 86- 103 (2021).

abortion rights in India have become more liberal citing the contracting religious and ethical debate. But the responsibility of the government does not end here, improving the situation relatively and absolutely are two different scenarios. The impetus is to place women's health as the central concern, incorporating recommendations such as special courts, increasing awareness to establish MTP Act, 2021 as a more comprehensive act. Ending this essay with a quote by Thali that "No law, no piece of paper that is hundreds of years old, will ever have me believe what is right or wrong about what choices I make with my body. My body, my choice."

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