



A CRITICAL ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT 2021 AND ITS IMPLICATIONS ON REPRODUCTIVE HEALTH CARE

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Abstract

The debate surrounding women's right to abortion is a contentious issue, both nationally and globally. There is ongoing confusion regarding whether the right to terminate a pregnancy holds more significance or if the right to life of an unborn child is paramount. This persistent debate has presented numerous challenges for women seeking to terminate unwanted pregnancies. Despite efforts to make laws concerning women more compassionate and practical, abortion laws have remained contentious and rigid across the world. The ongoing debate between pro-choice, which advocates for women's right to make independent abortion decisions, and pro-life, which emphasizes the State's interest in protecting the fetus's life, has gained traction in India following the amendment to the Medical Termination of Pregnancy Act, 1971. While the amendment has received some praise and support, it is not without shortcomings. It still lacks a rights-based approach to abortion and does not acknowledge abortion as a fundamental reproductive right. The increasing incidents of sexual crimes in the country highlight the urgent need for an inclusive law that removes conditions and respects women's bodily autonomy without imposing specific conditions for permissible abortions. While abortion remains a delicate and stigmatized subject, it is critical to understand that laws develop over time and may need to be revised when they become obsolete in order to properly serve society's best interests. This study seeks to assess both the benefits and drawbacks of the newly passed Medical Termination of Pregnancy (Amendment) Act, 2021. This research paper also looks into the effects or implications of the Medical Termination of Pregnancy (Amendment) Act, 2021 on the reproductive Health of Women. Furthermore, it makes a number of ideas that might be pursued further to improve the law, ease the issues that stakeholders encounter, and ultimately make it more advantageous to everyone involved.

Keywords: Abortion, Foetus, pregnancy, Reproductive health, termination

I. INTRODUCTION

Throughout history, women have used numerous forms of contraception and abortion. These practices, however, go beyond basic scientific and medical considerations; they are at the heart of a larger philosophical battle that calls into question core conceptions like family, state, motherhood, and young women's sexuality. As a result, they have provoked heated arguments over moral, ethical, political, and legal issues. Women have frequently faced societal and legal impediments to accessing abortion services. These prohibitions have hampered women's capacity to exercise their reproductive rights, resulting in hidden or visible means of getting abortions. The legal framework for abortion has evolved throughout time to reflect historical and sociological situations. Despite differences in form, goal, and method, these rules have constantly sought to meet social demands, frequently disregarding women's autonomy in questions of sexuality, fertility, and reproduction.

The Medical Termination of Pregnancy (MTP) Act of 1971 was a pivotal development in acknowledging and regulating pregnancy terminations in India. However, with societal changes, advancements in medicine, and evolving perspectives on reproductive rights, amendments to the existing law became necessary. Consequently, the Indian government enacted the MTP Amendment Act in 2021 to address gaps and align the legislation with current circumstances. The MTP Amendment Act 2021 brought about significant changes, such as extending the abortion gestational limit, improving access to safe abortion services, enhancing confidentiality and privacy safeguards, and integrating digital platforms for efficient data management. These amendments aimed at promoting women's reproductive autonomy, safeguarding their health, and reducing unsafe abortion practices. This research paper undertakes a critical analysis of the MTP Amendment Act 2021, exploring its implications, effectiveness, and challenges. Through a thorough examination of legal provisions, ethical considerations, healthcare infrastructure impacts, and societal repercussions, this paper aims to offer a nuanced understanding of the strengths and weaknesses of the amended MTP Act.

II. RESEARCH QUESTIONS

1. How does the Medical Termination of Pregnancy (Amendment) Act 2021 impact access to safe and legal abortion services for women in different regions of India?
2. What are the key provisions and changes introduced by the Amendment Act, and how do they align with international standards and recommendations for reproductive health care?
3. What are the implications of the Amendment Act on the broader landscape of reproductive rights, policies, and healthcare systems in India?
4. What are the legal challenges faced by women seeking abortion services post the Amendment Act, and how do these impact their reproductive health outcomes and what are the shortcomings of the said Act?

III. RESEARCH OBJECTIVES

1. To analyze the key provisions and changes introduced by the Medical Termination of Pregnancy (Amendment) Act 2021 and their implications on access to safe and legal abortion services.
2. To identify gaps, challenges, and opportunities in the implementation of the Amendment Act and propose recommendations for improving access to comprehensive reproductive health care services.
3. To examine the Amendment Act's implications on women's rights, autonomy, and decision-making regarding their reproductive health choices.
4. To assess the sociocultural, legal, and systemic barriers faced by women in accessing abortion services post the Amendment Act and their implications on reproductive health outcomes.

IV. SIGNIFICANCE OF THE STUDY

The significance of this study lies in its critical examination of the Medical Termination of Pregnancy (Amendment) Act 2021 and its implications on reproductive health care. Understanding the impact of this legislative change is crucial for policymakers, healthcare providers, advocacy groups, and women themselves. The study aims to contribute valuable insights into the effectiveness, challenges, and opportunities presented by the Amendment Act in improving access to safe and legal abortion services, protecting women's rights, and enhancing overall reproductive health care. By conducting a comprehensive analysis, this research paper seeks to inform evidence-based strategies and policy recommendations for advancing reproductive health rights and services in India.

V. RESEARCH METHODOLOGY

The research methodology adopted for the study is a doctrinal research. It involves an in-depth analysis of primary sources which includes legislations, precedents and secondary sources such as books and commentaries written by various authors. The research begins with a comprehensive study of the Medical Termination of Pregnancy Amendment Act 2021. The methodology also involves the scrutiny of various scholarly articles, relevant literature which are useful for the study. Through this doctrinal approach, the research aims to look into the impact of the MTP Amendment Act 2021 on the bodily autonomy of the women in making reproductive decisions and also into the shortcomings of the said Act as well as how it affects the reproductive health care.

VI. HISTORICAL BACKGROUND OF THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

Dr. Harshvardhan Goyal of the Ministry of Health and Family Welfare presented the Medical Termination of Pregnancy Bill 2020 to the House of People on March 2, 2020, following thorough consultations with experts, medical professionals, consultants, and various ministries. The main goal of this bill was to amend the existing

Medical Termination of Pregnancy Act of 1971, which regulates legal and authorized abortions. Additionally, the proposed Bill aimed to revise specific provisions of the Act in order to improve its effectiveness.

The Bill attempted to increase the legal window for abortion from 20 to 24 weeks, giving women a safer way to stop pregnancies they did not want to continue. It also stressed improving privacy, taking into account gestational age, and putting in place safety measures to safeguard pregnant women. Furthermore, the proposed legislation sought to update medical and healthcare procedures that were not addressed by the 1971 Act. There were legal obstacles against abortions after 20 weeks, especially for women who had been sexually assaulted, raped, or had physical or mental problems. The purpose was to provide all women, even those in disadvantaged situations, with safe medical treatments for terminating pregnancies.

VII. MAJOR AMENDMENTS OF THE ACT

The Amendment made to the MTP Act are a response to persistent advocacy from health professionals, women's rights activists, and various stakeholders who have filed numerous petitions in the High Court and Supreme Court. They contend that the current MTP Act does not adequately address the advancements in medicine and technology. The MTP Act of 2021 has implemented various reforms that have gained support from stakeholders, although it has also been criticised. One major change is the raising of the upper limit for pregnancy abortion from 20 to 24 weeks. Furthermore, termination under 20 weeks is now dependent on the opinion of one licensed medical practitioner, whilst termination beyond 20 weeks but not exceeding 24 weeks requires the opinion of two practitioners. Furthermore, the Act changed the criteria under which termination is permitted. Previously, abortion was permitted if there was a significant risk to the child, resulting in a major impairment. Abortion can now be carried out if the child is at danger of major physical and mental defects, increasing the range of circumstances under which abortion is permitted. The Act aims to expand the scope of the Medical Termination of Pregnancy Act of 1971 by incorporating a specific category of women, including those with disabilities, survivors of rape, girls under 18 years of age, and victims of incest.

Furthermore, the MTP Act of 2021 established a new institution called the Medical Board, which includes a Gynaecologist, a Paediatrician, a Radiologist or Sonologist, and other members. This Board is in charge of assessing whether abortion is needed owing to the identification of serious fetal anomalies, and the gestational restrictions outlined in the Act do not apply in such circumstances. An additional beneficial modification is the use of the words "any woman or her partner" instead of "any married woman or her husband" in the explanation section. This modification broadens the circumstances under which termination may be approved, including as in the event of contraceptive failure. Lastly, for the protection of privacy of a women undergoes such termination, the Act criminalizes the revelation of details of the woman to any person who is not authorized by law. The Act aims to ensure the confidentiality and privacy of women opting for pregnancy termination. This innovative provision will protect women's identities and uphold their right to privacy. Medical professionals are

prohibited from disclosing the identity of any woman seeking pregnancy termination under the laws in effect when the Act was introduced.

VII. DEFICIENCIES IN THE ACT

Similar to previous Acts concerning pregnancy termination, this Act also possesses certain deficiencies that impede its overall applicability and effectiveness. The amendments not only lack clarity, but also add uncertainty and raise unresolved issues, which might cause problems throughout implementation. While the MTP Act of 2021 raises the top limit for abortion, it does not define which women can have abortions between 20 and 24 weeks, allowing this issue to be resolved by future government regulations. Until these restrictions are implemented, women may risk ambiguity or be compelled to pursue legal remedies. Furthermore, the regulations governing termination for rape victims do not specify whether abortion can be obtained during judicial procedures or just after the trial has completed. The lack of clarity may cause delays, perhaps resulting in persons losing their right to abortion if the time limit is reached. Termination after 24 weeks is only permitted if the Medical Board discovers "substantial foetal abnormalities." Women seeking abortions after 24 weeks for reasons such as rape have no choice except to submit a writ petition in court.

The distinction that is made between instances of "serious mental and physical abnormalities" and "substantial foetal abnormalities" reveals cultural prejudices toward people with special needs, implying eugenics and encouraging an ableist legal perspective. Despite acknowledging the importance of time in pregnancy-related concerns, the Act does not specify a timetable within which the Medical Boards should preferably achieve an agreement on the foetus's status. This omission may cause problems and irreparable injury to pregnant mothers.

Furthermore, the establishment of a single Medical Board in each state can considerably limit access, particularly for women from marginalized and rural areas who may experience financial hardship in meeting the high standards. This might lead individuals to use illegal and dangerous abortion techniques. Furthermore, as previously stated, the boards may combine moral judgments with scientific reasoning and evaluate variables like as fetal viability, deviating from their primary mission.

Moreover, women with disabilities who seek abortions beyond 20 weeks encounter comparable barriers and prejudices in the medical system. They frequently get unsupportive and hazardous care from medical professionals, particularly in an Indian societal setting where locating disability-friendly medical workers is difficult. Involvement in the medical board may increase their sensitivity and danger of abuse. The current change may subject individuals to unnecessary medical scrutiny and exams, perhaps leading to compulsion into screening or terminating pregnancies based on beliefs about the hereditary transmission of disorders and worries about their capacity to have children.

One key shortcoming in the law is the restricted number of abortion providers. The Act requires that only doctors who specialize in Gynaecology or Obstetrics perform abortions. However, such competent doctors are primarily found in urban regions. According to the Rural Health Statistics of 2019-2020, there is a significant shortage of Obstetricians and Gynaecologists in rural regions, with a 69.7% gap in Community Healthcare Centres (CHCs) compared to the needed number. Furthermore, a large proportion of sanctioned posts for professionals in these fields remain unfilled. Furthermore, many public healthcare facilities lack the infrastructure to perform abortion services. According to the National Health and Family Survey of 2015-16, just 20% of abortions take place in public facilities, whereas 52% are performed in private facilities. This drives women to seek abortion procedures from private clinics, which are sometimes too expensive for economically disadvantaged people. As a result, many women are forced to resort to dangerous and illegal options. Abortion statistics show that the majority of abortions (53%) are performed by licensed doctors, while the remaining are completed by nurses, auxiliary nurse midwives, traditional birth attendants (dais), family members, or by women themselves (47%).

The Act's most significant drawback is its failure to give decision-making authority over pregnancy termination from medical practitioners to women themselves. It ignores women's agency and hinders their autonomy in decision-making, perpetuating a backward paternalistic paradigm in which women have no discretion. It also disregards the doctrine established by the Supreme Court in numerous important decisions. In the Suchita Srivastava case, the Supreme Court emphasized a woman's right to make reproductive choices, including bearing children, not bearing children, or choosing when to bear children. This right is integral to her right to privacy, dignity, and bodily integrity under Article 21 of the Indian Constitution. The Court reaffirmed this stance in the Puttaswamy v. State of Karnataka case, clarifying that the constitutional right to abortion is a component of one's private right under Article 21.

The Act's focus is exclusively on women, neglecting the inclusion of transgender and other gender-diverse individuals who may also require these services in specific situations. This heteronormative bias could impact the well-being of these communities, who are entitled to equal rights. Requiring medical practitioners to disclose information about a woman who has undergone termination to individuals "authorized by law" constitutes a significant infringement of her right to privacy. The individual may not be willing to share such sensitive information without consent, especially considering the societal stigma associated with abortion.

The fact that women do not have complete autonomy over their abortion choices is an area of concern. Abortion is considered a basic right for women, and they cannot be compelled to have one. The Medical Termination of Pregnancy Act of 1971 does not require women to defend their reasons for abortion, but they must seek it from a doctor. This process might be difficult for a woman to manage purely via her own free will. The Medical Termination of Pregnancy (Amendment) Act of 2021 does not provide women entire autonomy in determining whether to terminate their pregnancies for medical or legal grounds, causing emotional and physical hardship while they seek physicians' consent for abortion.

IX. IMPLICATIONS OF THE ACT ON THE REPRODUCTIVE HEALTH OF WOMEN

The MTP Amendment Act of 2021 is a crucial development in women's reproductive health and rights in India, with far-reaching implications that deeply affect their well-being and autonomy in this domain.

The MTP Amendment Act 2021 has significant implications, including the extension of the gestational limit for abortion from 20 to 24 weeks. This extension provides women with more time to make informed decisions regarding their pregnancies, particularly in cases involving complications or fetal abnormalities detected later in pregnancy. This change is crucial for protecting women's health and ensuring access to safe abortion services. Additionally, the Act aims to enhance the privacy and confidentiality of women seeking abortion services by prohibiting medical professionals from disclosing their identities. This provision is aimed at safeguarding women's privacy rights and reducing the stigma and discrimination associated with abortion. Furthermore, the introduction of the Medical Board under the MTP Amendment Act 2021 is another important implication. Comprising experts from diverse fields, this board evaluates cases of termination of pregnancies beyond 24 weeks based on medical expertise and ethical considerations. This measure enhances the safety and well-being of women by ensuring that decisions regarding late-term abortions are made with due consideration and expertise.

Moreover, the Act underscores the significance of informed consent by mandating that women provide written consent before undergoing abortion procedures. This requirement ensures that women possess a comprehensive understanding of the procedure, its consequences, and their entitlements before reaching a decision, thereby fostering autonomy and informed decision-making in reproductive healthcare. Additionally, the MTP Amendment Act 2021 targets the enhancement of access to safe abortion services by broadening the provider base to include registered medical practitioners with adequate training and expertise. This measure tackles the scarcity of qualified healthcare providers and guarantees that women, particularly those in rural and underserved areas, can access high-quality abortion services.

Nevertheless, despite these encouraging developments, challenges and apprehensions persist. It is crucial to monitor the Act's implementation and enforcement across various regions and healthcare facilities to ensure consistency and adherence to established standards. Furthermore, comprehensive education and awareness campaigns are essential to combat stigma, dispel misconceptions, and foster a deeper understanding of reproductive rights and choices.

X. SUGGESTIONS

It is imperative for the system to prioritize the interests and rights of women. To enhance the law and its implementation, several crucial issues must be addressed. These include establishing clear guidelines for post-20-week terminations, improving infrastructure, diversifying the medical board, promoting awareness of reproductive rights, enacting gender-neutral laws, and reducing the stigma around abortion. Furthermore, nationwide campaigns are needed to raise awareness about the MTP Act and sensitize medical personnel. It is essential to promote awareness about modern contraceptive options and ensure that the medical board comprises specialists from diverse fields to enhance its efficacy and accessibility.

As stated before, transgender and intersex people may require abortion services and should thus be included in the scope of the Act to assure them access to legal and safe abortion operations. Many women, particularly those who are on a tight budget and are turning to risky techniques, might benefit from state assistance to seek professional abortion procedures. Awareness campaigns to decrease the stigma around abortion can greatly reduce preventable deaths caused by cultural taboos. Abortion access ought to be governed by autonomy and self-determination, rather than the conditions imposed by existing law. Abortion should be provided on demand rather than under rigorous circumstances, because parenting should be a personal decision rather than a duty. Finally, the legislation should be drafted with input from representative stakeholders to ensure that it serves its goal, both in terms of text and intended impact.

XI. CONCLUSION

Faye Wattleton, a prominent American nurse, opines that “Reproductive freedom is critical to a whole range of issues. If we cannot take charge of this most personal aspect of our lives, we cannot take care of anything. It should not be seen as a privilege or as a benefit, but a fundamental human right.” The Medical Termination of Pregnancy Act of 2021 represents a positive step forward for women seeking safe and legal abortions, as well as for those aiming to terminate unplanned pregnancies within the bounds of the law. However, India must undertake additional efforts to reduce and ultimately eliminate the prevalence of illegal abortions. It is imperative for the government to enforce consistent adherence to professional standards and regulations across all healthcare institutions nationwide, thereby facilitating safe and legal pregnancy terminations.

However, under the current Amendment Act, a greater number of women will have access to safer pregnancy termination services, ensuring that individuals wishing to end a pregnancy are treated respectfully, confidentially, and fairly. It is admirable that the Central Government has adopted a strong position while taking into account the cultural variety, religious systems, and conceptual frameworks that exist in our country. Despite these encouraging moves, the amendment includes a number of limitations that make it difficult for women seeking safe pregnancy terminations. The Act falls behind society growth in terms of sociocultural advancement. It denies women's agency and control over their bodies, undermining their ability to make reproductive decisions. Furthermore, it ignores the actual realities of the availability of essential healthcare

facilities and access to secure treatments. Essentially, the law fails to maintain the concepts of dignity, autonomy, secrecy, and fairness for women as intended. Abortion is still considered a privilege conferred by the state upon satisfying specific requirements, rather than a basic right that can be practiced at any time.

India needs a law centered around women that values their freedom and privacy. This can be accomplished by giving women decision-making power and assisting them in making well-informed choices after evaluating all pertinent factors, rather than forcing them to follow decisions made by state-appointed individuals using insufficient criteria set by the government.

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