

02nd November, 2021

ANALYSIS OF THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

A Introduction

- 1 Abortion is not a mere medical-technical issue especially in a culturally and religiously inclined country like India. In fact, abortion is more than just a medico-legal issue in various parts of the world.
- 2 It encompasses the wide and deep-rooted ideology in relation to this subject which is integrated through various components including the family, the state, the struggle of women and the right of a woman over motherhood.
- 3 Termination of pregnancy in India is regulated by The Medical Termination of Pregnancy Act, 1971 (the MTP Act).
- 4 Abortion/termination of pregnancy is allowed only within the provisions of the MTP Act and in accordance with the rules laid down there under.
- 5 It is an Act to provide for the termination of certain pregnancies by registered medical practitioners.

B The MTP Act

- 1 The MTP Act illegalizes any abortion that takes place beyond the provisions of the said Act, and is understood to have not been performed in accordance with law.
- 2 The MTP Act essentially deals with the law relating to abortion, particularly the questions of who, where and when, i.e., who can terminate a pregnancy, where can a pregnancy be terminated and till when can a pregnancy be terminated.
- 3 The MTP Act was amended by The Medical Termination of Pregnancy (Amendment) Act, 2021 (No.8 of 2021) (the Amendment Act).
- 4 Prior to the amendment, the time length of pregnancy within which the termination could be given effect to was twelve weeks. Implying that beyond twelve weeks, the termination of pregnancy shall be held to be an offence under the provisions of the Indian Penal Code, 1860 (Code). It may be noted that before the enactment of the MTP Act in 1971, abortion was criminalized in India under Section 312 of the Code.

- 5 Further, the term “termination of pregnancy” was not defined under the MTP Act.

C The Amendment Act, 2021

On 25th March, 2021, the Amendment Act was notified and it brought certain substantial and progressive changes and introduced/modified the following provisions.

D Section 2- Definitions

- 1 Under Section 2, sub-clause (e) was inserted which defined “termination of pregnancy” as a procedure to terminate a pregnancy by using medical or surgical methods.
- 2 The MTP Act as well as the Amendment brought there under along with the Statement of Objects and Reasons, clearly clarify that any form of termination of pregnancy other than by medical or surgical methods done with the aid of a registered medical practitioner, shall be treated as an offence under the Code.
- 3 The insertion of clause (e) defining “termination of pregnancy” supports such clarification.

E Section 3- When pregnancies may be terminated by registered medical practitioners

- 1 Under Section 3, sub-section (2) was substituted wherein the length of pregnancy within which the termination could be performed was increased from twelve weeks to twenty weeks.
- 2 It was also provided that the termination could also be performed beyond twenty weeks but within twenty-four weeks only on the existence of the pre-condition.
- 3 Pregnancy may, within the meaning of Section 3(2)(b), be terminated within twenty-four weeks when in the opinion of at least two medical practitioners, continuation of such pregnancy could involve a risk to the life and physical or mental health of the pregnant woman as well as the child.
- 4 The explanations under sub-section (2) have also been modified.



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- 5 Explanation 1 states that a pregnancy caused as a result of failure of the measures taken by the woman or her partner to prevent pregnancy shall be presumed to constitute mental agony to the pregnant woman if such pregnancy is continued.
- 6 Explanation 2 states that a pregnancy alleged to have been caused by rape shall be presumed to cause grave mental injury to the pregnant woman on continuation of such pregnancy.
- 7 Thus, in both of the above circumstances, the upper gestation limit of twenty-four weeks shall be applicable for the purpose of termination of pregnancy.
- 8 Sub-section (2C) has been inserted by the Amendment Act which provides for constitution of a Medical Board in every State or Union Territory to exercise such powers and functions as may be prescribed by the Rules made under the MTP Act.
- 9 Section 3(2D) as inserted by the Amendment Act provides that a Medical Board shall consist of a Gynaecologist, a Paediatrician, a Radiologist or Sonologist and such other member as may be notified.

F Section 5A- Protection of privacy of a woman

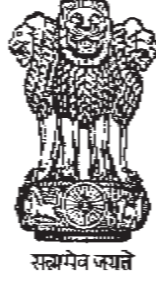
- 1 After Section 5, Section 5A has been inserted. It mandates that no particulars in relation to the pregnant woman including her name and other details relating to termination of the pregnancy shall be disclosed by the registered medical practitioner to any person except as authorized by law.
- 2 Contravention of such provision is punishable with imprisonment which may extend to 1 year or with fine or both.
- 3 The implication of such provision can directly be associated to the right to privacy as well the right of woman in relation to decisions in the matter of pregnancy and abortion.

G Section 6-Power to make rules

- 1 Through the Amendment Act, the power of the Central Government in relation to framing rules in the matter of training and experience of registered medical practitioners has been broadened. The Medical Termination of Pregnancy Rules and Regulations, 2003 specify the training and certification requirements of a registered medical practitioner.
- 2 Hence, Under Section 6(2), the Central Government is now also authorized to make rules in relation to^{3/4}
 - category of women who may terminate their pregnancy within the upper limit of twenty-four weeks;
 - norms of medical practitioner whose opinion is required for termination of pregnancy at different gestational periods;
 - powers and functions of the medical board as constituted under Section 3(2C).

H Conclusion

- 1 The Amendment Act and the modifications there under as brought about into the MTP Act have been applauded by women from varying collectives across the country. The demand for such amendment was being made since a long time in order to strengthen the abortion rights of women and at the same time asserting their dignity and autonomy in such decision.
- 2 The insertion of confidentiality clause binds not just the service providers but other stake holders which broadens the scope of real justice for women.
- 3 However, opinions from other side of the spectrum have also been received which argue that the Amendment Act is progressive but not enough. Yet, the current amendments do take into account various concerns that were not addressed by the MTP Act.



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EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 10] नई दिल्ली, बृहस्पतिवार, मार्च 25, 2021/चैत्र 4, 1943 (शक)
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 25th March, 2021/Chaitra 4, 1943 (Saka)

The following Act of Parliament received the assent of the President on the 25th March, 2021, and is hereby published for general information:—

THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021

No. 8 OF 2021

[25th March, 2021.]

An Act further to amend the Medical Termination of Pregnancy Act, 1971.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Medical Termination of Pregnancy (Amendment) Act, 2021.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

34 of 1971.

2. In the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the principal Act), in section 2,—

Amendment of section 2.

(i) after clause (a), the following clause shall be inserted, namely:—

'(aa) "Medical Board" means the Medical Board constituted under sub-section (2C) of section 3 of the Act;'

(ii) after clause (d), the following clause shall be inserted, namely:—

'(e) "termination of pregnancy" means a procedure to terminate a pregnancy by using medical or surgical methods.'

Amendment
of section 3.

3. In section 3 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

"(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner,—

(a) where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are,

of the opinion, formed in good faith, that—

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality.

Explanation 1.—For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by any woman or her partner for the purpose of limiting the number of children or preventing pregnancy, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation 2.—For the purposes of clauses (a) and (b), where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by the pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

(2A) The norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age shall be such as may be prescribed by rules made under this Act.

(2B) The provisions of sub-section (2) relating to the length of the pregnancy shall not apply to the termination of pregnancy by the medical practitioner where such termination is necessitated by the diagnosis of any of the substantial foetal abnormalities diagnosed by a Medical Board.

(2C) Every State Government or Union territory, as the case may be, shall, by notification in the Official Gazette, constitute a Board to be called a Medical Board for the purposes of this Act to exercise such powers and functions as may be prescribed by rules made under this Act.

(2D) The Medical Board shall consist of the following, namely:—

(a) a Gynaecologist;

(b) a Paediatrician;

(c) a Radiologist or Sonologist; and

(d) such other number of members as may be notified in the Official Gazette by the State Government or Union territory, as the case may be."

4. After section 5 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 5A.

"5A. (1) No registered medical practitioner shall reveal the name and other particulars of a woman whose pregnancy has been terminated under this Act except to a person authorised by any law for the time being in force.

Protection of privacy of a woman.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment which may extend to one year, or with fine, or with both."

5. In section 6 of the principal Act, in sub-section (2), after clause (a), the following clauses shall be inserted, namely:—

Amendment of section 6.

"(aa) the category of woman under clause (b) of sub-section (2) of section 3;

(ab) the norms for the registered medical practitioner whose opinion is required for termination of pregnancy at different gestational age under sub-section (2A) of section 3;

(ac) the powers and functions of the Medical Board under sub-section (2C) of section 3."

DR. G. NARAYANARAJU,
Secretary to the Govt. of India.