

# LEGALFOXES LAW TIMES

## MEDICAL TERMINATION OF PREGNANCY ACT, 1971

**By Keshav khandelwal**

Before 1971, when there was not any provision for legalized abortion, it was very hard to abort a child in a legalized manner under some circumstances. After the Medical Termination of Pregnancy Act 1971 which legalized the practice of abortion in a safer and more convenient manner, it has now relaxed the abortion law. Still, even in today's times thousand of women die in India every day because of illegal and unsafe abortion practices. Every day 13 women die in India due to unsafe abortion-related practices. Abortion was criminalized under Section 312 of the Indian Penal Code, 1860, imprisonment for seven years with an additional fine.

### **Development**

The Medical Termination of Pregnancy (Amendment) Bill 2020 was introduced in Lok Sabha by the Ministry of Health and Family Welfare, Dr. Harshvardhan Goyal on March 2, 2020. The Bill also seeks to extend the termination of pregnancy from 20 to 24 weeks, making it easier and more convenient for a woman to legally abort the unwanted pregnancy in a safe and secure manner. It also seeks to increase the safety practices, gestation period, and confidentiality of pregnant women. Several Public Interest Litigations were filed for the termination of the pregnancies beyond the period of 20 weeks of gestation period. So, even the victims of rapes, sexual assaults, and women having physical and mental deformities can medically terminate their pregnancies. Several Public Interest Litigations were filed for the termination of the pregnancies beyond the period of 20 weeks of gestation period. So, even the victims of rapes, sexual assaults, and women having physical and mental deformities can medically terminate their pregnancies. The Government of India appointed The Shah Committee, which carried out a complete review of different aspects of abortion, its effects, the category of women who were seeking it, etc. It was found that many married women were also seeking abortions due to different reasons like health or family planning. A PIL was filed in the Supreme Court by the Centre For Enquiry Into Health And Allied Themes (CEHAT)[5] regarding the slow

implementation of the Act. It was found that though the Act had been implemented in 1994, the State Governments and the Central Government had not taken appropriate actions for its effective implementation. Pursuant to the judgment of the Supreme Court, the PCPNDT Act was amended in 2003. A bench of Justices J S Khehar and Arun Mishra granted the benefit of Section 5 in the Medical Termination of Pregnancy Act, 1971, which allows abortion even after 24 weeks if there is a threat to the life of the mother.

### **Brief**

Where the pregnancy is due to the failure of any contraceptive method taken by the woman or her husband, termination of such a pregnancy is allowed so as to not subject the woman to the mental suffering caused by such unwanted pregnancy. The medical practitioners, in forming their opinion, will take into account all relevant factors, including the woman's surroundings or reasonably foreseeable situation. Where the pregnancy is caused due to rape, it would be inhuman to force a woman to continue with the pregnancy, which may lead to extreme mental anguish to the woman. Hence, in such cases, no trial or judgment is needed by the court to allow the abortion. The woman's allegation that she had been raped is sufficient. In case the woman who is pregnant has not attained the age of majority, or even if she is a major, is not capable of giving a valid consent due to unsoundness of mind, consent will have to be given by her guardians in writing.

### **Landmark Cases**

- Niketa Mehta vs. UOI SLP(C) 5334 of 2009

The Bombay High Court refused to allow the abortion of a 24 (twenty-four) week old fetus that 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.

- Dr. Nisha Malviya and Anr. V. State of M.P 2000 CriLJ 671

A rape victim was allowed to terminate her pregnancy. The other co-accused in her rape took her and terminated her pregnancy. They were charged with causing miscarriage without the consent of the pregnant women. The Court held all the accused guilty of termination of pregnancy as it had not been consented to by the mother of the pregnant woman or the woman herself.

The Supreme Court in other cases where pregnancies were beyond 20 weeks and the fetuses had various medical conditions and anomalies, resulting in a high risk to the fetus and the mother ([Tapasya Umesha Pisal vs. Union of India](#) WRIT PETITION (CIVIL) NO.635 OF 2017 [24 weeks]; [Meera Santosh Pal vs. Union of India](#) WRIT PETITIO (CIVIL) NO.17 OF 2017 [23 weeks]; [Mamta Verma vs. Union of India](#) WRIT PETITION (CIVIL) NO.627 OF 2017 [25 weeks]). In all these cases the Supreme Court referred the matters to a Medical Board and gave its decision based on the opinion of the Medical Board.

### **Misuse**

The misuse of abortion pills by some doctors and women in the city is raising concern. Along with cough syrups and painkillers, these pills, which help induce the termination of pregnancy up to seven weeks, are among the most abused medicines, said medical experts. In many cases, it is a do-it-yourself process, medical experts said. Another area of concern is that the pills are being administered by doctors not recognized by the MTP Act. Only doctors linked to an established clinic are allowed to prescribe these drugs so that in case of an emergency, the patient can be moved to a hospital quickly. However, there is the rampant flouting of the rule. Due to female foeticide, there is a steep decrease in the female population. Due to the diminution in the female population our society is becoming male dominant, which is not a good indication. With the decrease in the number of women, men consider themselves superior and above law, which in turn results in women's exploitation. Female foeticide has led to an increase in human trafficking. In 2011, 15,000 Indian women were bought and sold as brides in areas where foeticide has led to a lack of women.

### **Suggestion**

This calls for several measures. There is a need for a comprehensive reform of the MTP Act, to expand the scope of abortion beyond 20 weeks and lay down guidelines for the same. Presently

when Medical Boards are set up, it is important that there are guidelines for the Board, since there are differing views taken by the Board on when termination is recommended. Many cases raise difficult questions on the disability of the fetus and juxtapose the rights of the woman to reproductive autonomy and disability rights. These are difficult issues and certainly cannot be addressed just by relying on Medical Board Reports. Another law that trips doctors from performing genuine abortions is the Pre-Conception and Pre-Natal Diagnostic Techniques Act of 1994 (PC-PNDT) which criminalizes the sex determination of the fetus during the ultrasound. Notably, the amendment also recognizes the growing reality of sexually active single unmarried women and provides that single women can seek an abortion within the stipulated time period if it can be established that the pregnancy was unplanned and a result of contraceptive failure. The current MTP Act only accounts for sexually active married women.

