

Whether abortion laws are women-centric?

The **Medical Termination of Pregnancy Act (MTP)**, 1971, does not use the word ‘**abortion**’ but it is the willful killing of a foetus inside the womb of a woman, through medical or surgical method. In academic discourse, any question concerning termination of pregnancy through abortion involves in its fold a discussion on whether such abortion should be a choice. Additionally, the choice has to be evaluated in the light of the right to life of the unborn child, leading us to the ‘**pro-choice**’ and the **pro-life debate**.

The article ‘**Whether abortion laws are women-centric?**’ is written by- [Tanya Singh](#), Banasthali University.

Abortion can be done by 2 methods:

- **Medical Abortion:** A woman who is pregnant for less than 7 weeks can go for a medical abortion. This process involves terminating a pregnancy with the help of pills and medications. It is a non-surgical method and it must be done under the supervision of a physician.
- **Surgical Abortion:** If a woman wishes to undergo an abortion beyond 7 weeks of gestation, then one can perform a surgical abortion, and must effective than a medical abortion.

Abortion or the termination of pregnancy as it is referred to in legal parlance, was illegal in India until 1971, as **Section 312-316** of the Indian Penal code, 1861 made it a criminal offence, but in 1971, the Medical Termination of Pregnancy Act, 1971 was enacted which induced abortion legal in certain circumstances.

Historical Background of Abortion

In India, abortions are regulated by the Medical Termination of Pregnancy Act, 1971. Recently, the Lok Sabha passed The Medical Termination of Pregnancy (Amendment) Bill, 2020 in March. It was deemed as a progressive step that seeks to empower Indian women and removes all obstacles for them to exercise the choice of abortion. There is bound to be an overlap of the two in the context of the Indian socio-economic realities.

The discussion for the need of abortion law in India was started in the 1960s when the government set up the **Shantilal Shah Committee** to evaluate whether an abortion law plays an important role in our legislation or not. At that time abortions were strictly illegal under **Section 312** of the Indian Penal Code, 1860, and **causing the miscarriage** of a woman was a crime punishable with imprisonment up to **3 years or a fine**. The Committee carried out a review of the legal, medical and socio-cultural aspects of abortion and recommended for a legalized abortion and law on comprehensive abortion care. However, even when the MTP Act was introduced, the penal provisions weren’t justified. The law on ‘causing miscarriages’ continues and the punishments remain the same for this.

Present Law for Abortion

The Medical Termination of Pregnancy Act 1971 is the sole legislation governing induced abortions in India. The act regulates 3 aspects of termination of pregnancy, namely;

- When pregnancies may be terminated?
- By whom can it be terminated?
- Where can they be terminated?

Section 3 of the Act states that “**the termination of a pregnancy by a registered medical practitioner**” if he is of the opinion that if there is the continuance of the pregnancy, then it would involve a risk to the life of the woman or injury to her physical or mental health or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities or a seriously handicapped. Further, in case of the length of pregnancy being 12 weeks, the opinion of one registered practitioner is required, whereas, in case of pregnancy extending 12 weeks but not more than 20 weeks, the Act requires the opinion of two registered practitioners.

If unwanted pregnancy of a married woman may be presumed to cause grave injury to her mental health if it is caused as a result of the failure of a contraceptive method. In determining the injury caused to a woman, the Act considers the actual and foreseeable environment of the woman. The consent of the pregnant woman is required for termination of pregnancy and in case of a woman below 18 years or above 18 years but mentally ill, the consent of a guardian in writing is needed.

Section 4 of the Act states that the **place where the pregnancy can be terminated** and it includes a hospital established or maintained by the government, or a place approved by the government or a district-level committee by the government for the purposes of the Act.

Section 5 states the **relaxation of provisions in section 3 and 4**, in case a registered medical practitioner forms an opinion in good faith, that the termination is immediately necessary to save the life of a woman.

Aberration in the Act

- The pregnancies beyond the period of 20 weeks cannot find a reasonable justification in the present day and age.
- There are instances where abnormalities in the foetus can be detected only after 20 weeks. If an abnormality in the foetus is discovered post 20 weeks of pregnancy, and the woman wishes to abort, she is subjected to the rigmarole of petitioning the high court.
- The requirement of a medical practitioner forming an opinion even as to the mental health of a woman is unjust, as it gives room to subjective interpretation. A pregnant woman should be regarded as the best judge of her mental well being..
- The requirement of 2 registered medical practitioners beyond a period of 12 weeks of pregnancy is unduly harsh for the woman from poor and under-developed regions, who do not have easy access to medical facilities.

- The Act takes into account unwanted pregnancies of an only married woman, caused due to contraceptive failure, under the presumption of causing grave injury to mental health. There is an underlying denial of the fact that unmarried women have unintended pregnancies that could cause grave injury to their mental health.

Supreme Court Judgments

Suchita Srivastava vs. Chandigarh Admin The Apex Court has held a woman's reproductive autonomy to be her fundamental right to privacy and has said that the decision to have or not have a child should be hers alone, devoid of any state intervention. However, till now, there are no visible changes done in the MTP Act to give such effects of judgement.

Murugan Navakkar vs. Union of India & Ors. The Apex Court held that "Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through the present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed."

Savita Sachin Patil vs. Union of India In this case, termination of a 27-week pregnancy was prayed for on the ground that the fetus had severe physical anomalies. However, the Apex court shockingly rejected termination of pregnancy, considering the report of the medical board which opined that though the foetus suffered from physical anomalies, there is no risk to the physical health of the mother.

Need for autonomy

The decision to have or not have a baby should vest to the pregnant female alone. An unwanted pregnancy can force women to access unsafe abortions which could cause severe physical and mental injury or even death of the women. State actions should be limited to providing comprehensive and safe abortion along with other sexual and reproductive healthcare. Beyond that, any intervention in matters of choice of women is not only against the principles of equality but also an infringement of the fundamental right to privacy of women.

Conclusion

The decision to not bring a child to life is a tough call for a mother. Pregnancy is not just physically consuming but involves a lot of emotions. However, if a woman makes the hard choice of terminating her pregnancy, she must not be left vulnerable to an unfavourable third party opinion. The stringent provisions of the MTP Act interfere with the reproductive rights of women. That the right to make reproductive choices is a component of the personal liberty of women has been well recognized by the Supreme Court of India. It is time that the focus of legislation shifts from the opinion of a medical service provider to ways and means of empowering and enabling women to make informed reproductive choices.