

# SEEKING A MORE PROGRESSIVE ABORTION LAW

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

An official explaining the process of abortion using the manual vacuum aspirator at a hospital in Muzaffarpur, Bihar. | Photo Credit: [Getty Images](#)

Recent reports have shown that more than 10 women die everyday due to unsafe abortions in India, and backward abortion laws only contribute to women seeking illegal and unsafe options. The Cabinet has recently approved the Medical Termination of Pregnancy (Amendment) Bill, 2020 (MTP Bill, 2020) which will soon be tabled in Parliament. It seeks to amend the Medical Termination of Pregnancy Act, 1971 (MTP Act) and follows the MTP Bills of 2014, 2017 and 2018, all of which previously lapsed in Parliament.

The MTP Act divides its regulatory framework for allowing abortions into categories, according to the gestational age of the foetus. Under Section 3, for foetuses that are aged up to 12 weeks, only one medical practitioner's opinion is required to the effect that the continuance of the pregnancy would pose a risk to the life of the mother or cause grave injury to her physical or mental health; or there is a substantial risk that if the child is born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. But if the foetus is aged between 12 weeks and 20 weeks, at least two medical practitioners' opinions conforming to either of the two conditions are required.

The MTP Act also specifies that 'grave injury' may be explained as the anguish caused by a pregnancy arising out of rape, or the anguish caused by an unwanted pregnancy arising out of the failure of a contraceptive used by a married woman or her husband. Beyond 20 weeks, termination may be carried out where it is necessary to save the life of the pregnant woman.

Several issues arise from the current framework under the MTP Act. First, at all stages of the pregnancy, the healthcare providers, rather than the women seeking abortion, have the final say on whether the abortion can be carried out. This is unlike the abortion laws in 67 countries, including Iceland, France, Canada, South Africa and Uruguay, where a woman can get an abortion 'on request' with or without a specific gestational limit (which is usually 12 weeks).

It is true that factors such as failure of contraceptives or grave injury are not required to be proved under the MTP Act. However, to get a pregnancy terminated solely based on her will, the woman may be compelled to lie or plead with the doctor. Thus, at present, pregnant women lack autonomy in making the decision to terminate their pregnancy, and have to bear additional mental stress, as well as the financial burden of getting a doctor's approval.

Second, the MTP Act embodies a clear prejudice against unmarried women. According to 'Explanation 2' provided under Section 3(2) of the Act, where a pregnancy occurs due to failure of any birth control device or method used by any "married woman or her husband", the anguish caused is presumed to constitute a "grave injury" to the mental health of the pregnant woman. While the applicability of this provision to unmarried women is contested, there is always the danger of a more restrictive interpretation, especially when the final decision rests with the doctor and not the woman herself.

Third, due to advancements in science, foetal abnormalities can now be detected even after 20 weeks. However, the MTP Act presently allows abortion post 20 weeks only where it is necessary to save the life of the mother. This means that even if a substantial foetal abnormality

is detected and the mother doesn't want to bear life-long caregiving responsibilities and the mental agony associated with it, the law gives her no recourse unless there is a prospect of her death.

In 2008, the Bombay High Court was petitioned by Haresh and Niketa Mehta to allow them to abort their foetus that had been diagnosed with a heart defect in its 22nd week. While the case got nationwide attention, the Mehtas' plea was turned down, and Niketa Mehta eventually suffered a miscarriage in the 27th week of her pregnancy.

Several cases have followed since. Only in some of them has the Supreme Court allowed the termination of a pregnancy beyond 20 weeks, based on the advice by the Medical Board regarding the threat to the mother's life.

While the MTP Bill, 2020, is a step in the right direction, it still fails to address most of the problems with the MTP Act. First, it doesn't allow abortion on request at any point after the pregnancy. Second, it doesn't take a step towards removing the prejudice against unmarried women by amending the relevant provision. And finally, it enhances the gestational limit for legal abortion from 20 to 24 weeks only for specific categories of women such as survivors of rape, victims of incest, and minors. This means that a woman who does not fall into these categories would not be able to seek an abortion beyond 20 weeks, even if she suffers from grave physical or mental injury due to the pregnancy.

However, the Bill does make the upper gestational limit irrelevant in procuring an abortion if there are substantial foetal abnormalities diagnosed by the Medical Board. This means that even if there is no threat to the mother's life, she would be able to procure an abortion as soon as a substantial foetal abnormality comes to light. While this is an important step and would have in the past helped many women who fought long battles in Court without recourse, it is crucial that it is accompanied by appropriate rules for the Medical Boards that guard against unnecessary delays, which only increase the risks associated with a late abortion.

The Supreme Court has recognised women's right to make reproductive choices and their decision to abort as a dimension of their personal liberty (in *Mrs. X v. Union of India*, 2017) and as falling within the realm of the fundamental right to privacy (in *K.S. Puttaswamy v. Union of India*, 2017). Yet, current abortion laws fail to allow the exercise of this right. While it is hoped that MTP Bill, 2020 will not lapse in Parliament like its predecessors, it is evident that it does not do enough to secure women's interests, and there is still a long road ahead for progressive abortion laws.

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