

STILL A LONG WAY FOR TERMINATION AS AN UNCONDITIONAL RIGHT

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

'The new law is not in sync with other central laws' | Photo Credit: Getty Images/iStockphoto

The issue of abortion is in the news again, internationally. This, therefore, appears to be a good time to pen down a summary and analysis of the legal status of abortions in India.

Under the general criminal law of the country, i.e. the Indian Penal Code, voluntarily causing a woman with child to miscarry is an offence attracting a jail term of up to three years or fine or both, unless it was done in good faith where the purpose was to save the life of the pregnant woman. A pregnant woman causing herself to miscarry is also an offender under this provision apart from the person causing the miscarriage, which in most cases would be a medical practitioner.

In 1971, after a lot of deliberation, the Medical Termination of Pregnancy (MTP) Act was enacted. This law is an exception to the IPC provisions above and sets out the rules — of when, who, where, why and by whom — for accessing an MTP. This law has been amended twice since, the most recent set of amendments being in the year 2021 which has, to some extent, expanded the scope of the law. However, the law does not recognise and/or acknowledge the right of a pregnant person to decide on the discontinuation of a pregnancy.

The law provides for a set of reasons based on which an MTP can be accessed: the continuation of the pregnancy would involve a risk to the life of the pregnant woman or result in grave injury to her physical or mental health. The law explains that if the pregnancy is as a result of rape or failure of contraceptive used by the pregnant woman or her partner to limit the number of children or to prevent a pregnancy, the anguish caused by the continuation of such a pregnancy would be considered to be a grave injury to the mental health of the pregnant woman. The other reason for seeking an MTP is the substantial risk that if the child was born, it would suffer from any serious physical or mental abnormality.

The existence of one of these circumstances (at least), along with the medical opinion of the medical practitioner registered under the MTP Act is required. A pregnant person cannot ask for a termination of pregnancy without fitting in one of the reasons set out in the law. The other set of limitations that the law provides is the gestational age of the pregnancy. The pregnancy can be terminated for any of the above reasons, on the opinion of a single registered medical practitioner up to 20 weeks of the gestational age. From 20 weeks up to 24 weeks, the opinion of two registered medical practitioners is required. This extended gestational limit is applicable to certain categories of women which the rules define as either a survivor of sexual assault or rape or incest, minors, change of marital status during the ongoing pregnancy, i.e. either widowhood or divorce, women with major physical disabilities, mentally-ill women including mental retardation, the ground of foetal malformation incompatible with life or if the child is born it would be seriously handicapped, and women with pregnancy in humanitarian settings or disaster or emergency situations as declared by the government.

Any decision for termination of pregnancy beyond 24 weeks gestational age, only on the ground of foetal abnormalities can be taken by a Medical Board as set up in each State, as per the law. No termination of pregnancy can be done in the absence of the consent of the pregnant person,

irrespective of age and/or mental health.

The law, as an exception to all that is stated above, also provides that where it is immediately necessary to save the life of the pregnant woman, the pregnancy can be terminated at any time by a single registered medical practitioner. This, as stated, is the exception and is understood to be resorted to only when the likelihood of the pregnant woman dying is immediate.

While India legalised access to abortion in certain circumstances much before most of the world did the same, unfortunately, even in 2020 we decided to remain in the logic of 1971. This, despite the fact that by the time the amendments to the MTP Act were tabled before the Lok Sabha in 2020, just before the lockdown following the novel coronavirus pandemic, courts across the country (over the preceding four years) had seen close to 500 cases of pregnant women seeking permission to terminate their pregnancy (broadly on reasons of either the pregnancy being as a result of sexual assault or there being foetal anomalies incompatible with life). In a number of these cases, the courts had articulated the right of a pregnant woman to decide on the continuation of her pregnancy as a part of her right to health and right to life, and therefore non-negotiable. Similarly, a number of courts had also viewed the cases at hand in the realm of the facts of the case and decided not to set the interpretation of the law straight.

This was also after the landmark right to privacy judgment of the Supreme Court of India in which it was held that the decision making by a pregnant person on whether to continue a pregnancy or not is part of such a person's right to privacy as well and, therefore, the right to life. The standards set out in this judgment were also not incorporated in the amendments being drafted. The new law is not in sync with other central laws such as the laws on persons with disabilities, on mental health and on transgender persons, to name a few. The amendments also did not make any attempts to iron out the confluences between the MTP Act and the Protection of Children from Sexual Offences (POCSO) Act or the Drugs and Cosmetics Act, to name a few.

While access to abortion has been available under the legal regime in the country, there is a long road ahead before it is recognised as a right of a person having the capacity to become pregnant to decide, unconditionally, whether a pregnancy is to be continued or not.

Anubha Rastogi is a lawyer practising in the courts of Mumbai for the past 19 years and is an active voice on sexual reproductive health and justice issues

[Our code of editorial values](#)

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com