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Trends and policy realities of abortion (MTP) in India

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ABSTRACT

Abortion is vital health care. It is human right. It is an ethical choice. Unsafe abortions are the third leading cause of maternal mortality in India. Abortion is the spontaneous or induced termination of pregnancy before fetal viability. Some prefer miscarriage to spontaneous pregnancy loss. Medical termination of pregnancy is referred as the installation of miscarriage. According to Indian customs, marriage is a legalized relationship of man and woman for the procreation of children. Reproduction of children is a noteworthy right allowed to ladies by nature. When a woman is forced to have an abortion without her wish or consent, it amounts to breach of her right as a woman to reproduce children. Termination of pregnancy has been prohibited by law in many countries, but in India induced abortion is legal under the Medical Termination of Pregnancy (MTP) Act 1971.

Keywords: Late medical abortion, Mifepristone, Misoprostol

INTRODUCTION

Medical abortion is an effective and acceptable option for abortion care. (1)

Given the few medical requirements for safe provision of medical abortion drugs, and that the abortion process may generally be managed by the woman, a growing proportion of induced internationally are medical abortions. (2)

Unsafe abortion remains a significant threat to women's lives and health Improved access to medical abortion, including by expanding the gestational ages at which it can safely be used



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is one strategy to reduce unsafe abortion, particularly where trained surgical providers are limited. (3,4)

The most effective medical abortion regimen combines mifepristone with misoprostol; however, variation exists in dose, timing and route of administration of the two drugs. A large body of evidence, practice internationally, and recommendations by the World Health Organization (WHO) supports the efficacy of a 200 mg dose of mifepristone, followed by 800 mcg of misoprostol in pregnancies up to 63 days gestational age (5,6) and recent data supports extending its use to 70 days gestation. (7)

These protocols are highly effective, with treatment failure occurring in approximately 2–5% of cases. (8)

In all types of abortions including medical abortion also, it is always recommended to be supervised by trained health care providers with a medical prescription. Medical abortion with mifepristone and misoprostol is a very safe option for termination of pregnancy when consumed under medical supervision with a success rate of 92%–97%. (9)

Clear guidelines have been formulated by organizations like WHO and in India by FOGSI regarding the use of abortion pills. (10)

However, safe abortion services are still inaccessible to many women especially those residing in rural and remote areas. Due to inaccessibility and lack of awareness, women seek unsafe abortion practices. (11,12)

The amendment done in 2002 allows medication abortion up to 7 weeks' gestation. In 2003, it was further amended allowing certified providers to prescribe medication abortion drugs outside of a registered facility as long as emergency facilities were available to them. (13)

Despite such clear guidelines and recommendations, self-administration of these drugs by pregnant women has become highly prevalent due to the availability of these drugs over the counter. Many women depend on medical abortion and consider it as a method of spacing between pregnancies. (14)

An important reproductive health service, medical termination of pregnancy (MToP) is an acceptable and safe option for women seeking abortion in the first and second trimesters of pregnancy. (15)

It involves the use of two medications, mifepristone and misoprostol, and can be safely administered by general practitioners (GPs) and mid-level healthcare providers such as nurses and midwives. (16,17)

Administration of MToP in high-income countries by nursemidwife providers solely has been shown to be effective and acceptable to women. (18)

Similar to other high-income countries, abortion laws are inconsistent across Australia, which makes access complex. Although Australia has a federal system of government, abortion law is located in state law. (19)

As such, provision and administration of MToP differs widely, existing within state criminal legislation in some Australian jurisdictions. (20)

History

Since ancient times, abortions have been done using a number of methods, including herbal medicines acting as abortifacients, sharp tools through the use of force, or through other traditional medicine methods.

Induced abortion has a long history and can be traced back to civilizations as varied as ancient China ancient India since its Vedic age, ancient Egypt with its Ebers Papyrus (c. 1550 BCE), and the Roman Empire in the time of Juvenal (c. 200 CE). (21,22,23)

One of the earliest known artistic representations of abortion is in a bas relief at Angkor Wat (c. 1150). (24,25)

The fetus is considered valuable property of the woman and not a human life while in the womb (Exodus 21:22–23). While Judaism encourages people to be fruitful and multiply by having children, abortion is allowed and is deemed necessary when a pregnant woman's life is in danger. (26.27)

Medical abortion

Throughout the history, many naturally occurring substances have been used as abortifacients. Even today only safe and effective arbortfacient drugs are used. According American college of obstetricians and gynaecologists, outpatient medical abortion is an acceptable alternative to surgical abortion in appropriately selected women at less than 49 days gestation. Beyond this point the viable data, although less robust, support surgical abortion as the preferable method. These are the antiprogestin, mifepristone. The antimetabolite methotrexate and prostaglandin misoprostol. These agents cause abortion by increasing uterine contractility either by reversing the progesterone-induced inhibition contractions. Antiprogestins are synthetic steroids block the activity of progesterone, a natural hormone that prepares the endometrium, the inner lining of the uterus, for implantation and continuation of pregnancy. (28)



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Medical Termination of Pregnancy Bill.

It was in the 1960s, when abortion was legal in 15 countries, that deliberations on a legal framework for induced abortion in India was initiated. The recommendations of this Committee were accepted in 1970 and introduced in the Parliament as the Medical Termination of Pregnancy Bill. This bill is introduced by the Government of India, after 20 years of the Family Planning programme.

The Medical Termination of Pregnancy Act **1971 was enacted** by Parliament on 22nd year of Republic of India to provide for the termination of certain pregnancies by registered Medical Practitioners and for matters connected therewith or incidental thereto, such as

- 1. Where a pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall above presumed to constitute a grave injury to the mental health of the pregnant woman.
- 2. Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be resumed to constitute a grave injury to the mental health of the pregnancy woman.
- 3. In determining whether the continuation of a pregnancy would involve such risk of injury to the health as in mentioned in sub section (2) account may be taken of the pregnant women's actual or reasonable foreseeable environment.
- 4 (a) No pregnancy of woman, who has not attained the age of eighteen years, or who having attained the age of eighteen years is a lunatic, shall be terminated except with the consent in writing of the guardian.
- (b) save as other wiser provided in clauses (a) No pregnancy shall be terminated except, with the consent of the pregnant woman.

As there were certain short comes in the Act of 1971 such as (i) it does not provide qualified termination of pregnancy beyond 20 weeks (ii) Failed to provide safety for qualified termination of pregnancy (iii) Lack of technical advancement and procedures which are developed over a period of time, the amendment of the Act has become necessary.

The Highlights of the Amended Bill 2020

1. The Bill increases the time period within which abortion may be carried out. It regulates the conditions under which a

pregnancy may be aborted. 2. As per 1971 Bill, the abortion requires the opinion of one doctor, if it is done within 12 weeks of conception and two doctors if it is done between 12 and 20 weeks. The Amended Bill allows abortion to be done on the advice of one doctor up to 20 weeks, and two doctors in the case of certain categories of women between 20 and 24 weeks. 3. The Bill sets up state level Medical Boards to decide if a pregnancy may be terminated after 24 weeks in cases of substantial fetal abnormalities.

Types of Abortions:

Abortion is **classified** into various categories depending upon the nature and circumstances under which it occurs.

For instance, it may be either, (i) natural/ spontaneous; (ii) accidental; (iii) artificial or induced abortion.

Objectives of the Medical Termination of Pregnancy Act, 1971:

The main objective of the Medical Termination of Pregnancy Act of 1971 was to reduce the death rate of women from illegal methods of abortions and to enhance the health conditions of the women. Under this Act the pregnancies were ended by the licensed medical practitioners under specific or special circumstances. Which is clearly stated in the Preamble of the Act is as follows:

"An Act to provide the termination of certain pregnancies by registered Medical Practitioners and for matters connected therewith or incidental thereto".

Legal Validity:

Article 21 of our Constitution guarantees right to life and personal liberty to all its citizens and grants right to health to both the child and the woman. It is argued that, if a woman is not given right over her body then it is an infringement of her fundamental right as the unborn is a part of the mother.

Prior to the enactment of the Act in 1971, abortion was illegitimate and no specific provisions were there for termination of pregnancy. Subsequently, provisions were made in Indian Penal code. Section 312 to 318 of the Indian Penal Code relates to the Provisions for the offences relating to newborn or unborn children. Sec. 312 of Indian Penal Code 1860, is intentionally "causing miscarriage" specifically deals with the termination of pregnancy, which reads as follows:

"Whoever voluntarily tries to cause the miscarriage to a woman except in the good faith or where the woman's life in danger shall be liable for imprisonment which may extend to three years and shall also be liable to fine."



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Who can terminate the Pregnancy:

As per the MTP Act, pregnancy can be terminated only by a registered Medical practitioner (RMP) who meets the following requirements:

- (i) Has a recognized medical qualification under the Indian Medical Council Act.
- (ii) Whose name is entered in the State Medical Register?
- (iii) Who has such experience or training in gynecology and obstetrics as per the MTP RULES?

Place where Pregnancy may be termination:

No termination of pregnancy shall be made in accordance with this Act at any place other than

- (i) A Hospital established or maintained by Government or
- (ii) A place for the time being approved for the purpose of this Act by the Government.

The sum and substance of the Amended Medical Termination of Pregnancy Act is to provide safe and qualified abortions using, which is compatible. The law needs to be amended time to time in view of the changing social circumstances and for protecting the rights of women.

Latest case laws:

1. The Supreme Court bench headed by Justice DY Chandrachud, in its judgement passed on 29-9-2022, has said, "It's ultimately the prerogative of each woman to decide as per her material circumstances. Various economical, cultural, or social factors play a part..."

It is also said that unmarried and single women whose pregnancy is between 20 to 24 weeks will also have the right to abortion like married women. The Court said that not allowing unmarried women the right to abortion between 20 to 24 weeks is a violation of the right to equality before law under Article 14 of the Constitution. It also ruled that under the Medical Termination of Pregnancy Act or MTP Act, rape would include marital rape as well. This means, if a woman has unconsensual sex with her husband, she has the right to undergo abortion.

The Judgment clearly and categorically stated as below about the Act:

What is the Medical Termination of Pregnancy Act?

The act allows abortion till 20 weeks of pregnancy.

It can be permitted if backed by medical opinion for reasons such as:

- · The pregnant woman would be at risk if she continues the pregnancy.
- \cdot If it causes grave injury to the medical or physical health of the woman.
- · If the child born would suffer from a serious ailment.

It allows pregnancy to be terminated up to 24 weeks after it is backed by 2 medical practitioners for reasons such as:

- · If the woman is a victim of sexual assault or rape.
- · If the woman is a minor.
- · If the woman is in an emergency situation that is declared by the Government.
- · If the woman is mentally unwell or has some major physical disability.

If a woman wants to terminate her pregnancy beyond 24 weeks on the ground of foetus abnormalities, a four-member board has to be consulted.

- 2. **K.S.Putu Swamy Vs. Union of India** –Judgement passed on 26-9-2016, The Supreme Court recognized the right of reproduction (Choice for production of children) as the Fundamental Right, which comes under right to liberty Article, 21 of Constitution of India.
- 3. Suchita Shrivastava v. Chandigarh Administration (2009): In this case the Supreme court, court held that though a woman had full right over her body, she only had a "qualified 'right to abortion'". According to the Court, this right is qualified since there is a "compelling state interest" in protecting the life of the prospective child. The MTP Act embodies the qualifications or reasonable restrictions on the exercise of the right.
- 4. **The Supreme Court on 21-9-2017** allowed two minor rape victims from Delhi and Bengaluru to abort their foetus while observing that the medical boards have said termination of pregnancy was permissible in these two cases.

A bench headed by Chief Justice Dipak Misra perused the reports of the medical boards of the AIIMS and Bangalore Medical College and Research Institute, where both the minors were examined in pursuance to its orders. The bench, also



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Comprising Justices Amitava Roy and A M Khanwilkar, directed preservation of the terminated foetus for DNA sampling during the investigation in both the cases.

As per the medical report from AIIMS, there was no risk involved in aborting the foetus of a 13-year-old girl, who is in her 23rd week of pregnancy. Similarly, the medical board of the Bengaluru hospital opined that the 24-week-old foetus of the 17-year-old girl can be aborted. The bench said that medical expense of the process of termination of pregnancy would be borne by the respective states.

About MTP Act

Abortion was legally made available in India through the Medical Termination of Pregnancy Act 1971, which permitted the pregnancy to be terminated under specific criteria, such as: to save a woman's life; to protect her physical and mental wellbeing; when there is an economic and social necessity; and in cases of contraception failure between married couples.(28)

The Act set the gestational limit for abortion at 20 weeks and when the length of pregnancy exceeded the permissible limit, abortions were performed only with prior permission from the courts or in emergency circumstances, when the life of the women is in danger. (29)

Across the globe, over 20 European countries have recognized that whenever there is a physical or mental threat to the women, that can be considered as a ground for abortion irrespective of gestational age. (30)

India saw a key change in abortion policies with the introduction of The Medical Termination of Pregnancy (Amendment) Act, 2021. This Act is hailed to be progressive legislation since the existing gestation limit is increased to 24 weeks. The law also empowers women to seek abortion anytime during the pregnancy; even after completion of the prescribed gestational age limit, provided there are substantial fetal abnormalities. These substantial fetal abnormalities need to be confirmed by the Medical Board. The increased gestational age limit, along with advanced medical technologies, is favorable for women to have safe and effective abortions. The law also permits abortions on the ground of contraceptive failure even among unmarried women which were earlier restricted to the married couple. (31)

Ending a dangerous undertaking abortions

A 29-year-old woman walked into the State-run J.J. Hospital in Mumbai with severe bleeding. A medical examination revealed the cause to be an incomplete abortion that had led

to a severe infection. The housewife from Byculla had had a combination of two abortion drugs, mifepristone and misoprostol. Though these are the common drugs used in a medical termination of pregnancy (MTP), they ought to be had only with an authorized prescription. The woman had accessed them from a chemist or a quack who had failed to gauge her accurate gestational age and the complications that could arise thereafter. "Due to the higher gestational age, and despite consuming the drugs, she had had an incomplete abortion. The remains in her uterus caused severe infection and had to be removed through a suction-evacuation procedure," said gynecologists' Dr. Ashok Anand.

The patient required two units of blood, was put on a high antibiotic dosage and discharged after her condition improved three days later. But when the doctors asked her about the source of the pills, she refused to say a word. (32)

"Unsafe abortions killing a woman every two hours"

One of the major reasons is that the Centre is yet to implement the recommendations for amendments to the Medical Termination of Pregnancy (MTP) Act as discussed by an expert group it had constituted in 2010. The MTP Act, 1971, enabled women to undergo abortions with specific conditions.

To correct this, the Ministry of Health and Family Welfare had appointed the expert group to examine the MTP Act and amend it to enable increased access to safe abortion services.(33)

Risky miscarriages in India

Unsafe abortions are those performed illegally, by untrained practitioners with faulty equipment, leading to injuries, infections and even death. India has the highest number of unsafe abortions, reports Namita Kohli.

The Mumbai High Court judgment disallowing the abortion of a 26-week-old foetus has sparked off a nationwide debate on abortion and a woman's right of choice. But for a majority of Indian women, 'medical termination of pregnancy' (MTP, the medical term for abortions) remains largely unsafe.

India has the highest number of unsafe abortions in the world. According to government estimates, 8.9 per cent of maternal deaths in India every year — around 15,000 — are caused by unsafe abortions. The irony is apparent when doctors say MTP, if done right, is among the safest medical procedures.

Of the 6.4 million abortions performed in India in 2002 and 2003, 56 per cent or 3.6 million were unsafe, says the Abortion Assessment Project I, 2004. The study — one of the



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largest in recent times — was managed by the Mumbai-based Centre for Equity into Health and Allied Themes and Health watch Trust. It included qualitative and quantitative studies across various states by non-governmental organisations (NGOs), researchers and healthcare professionals.(34)

A strong case for amending MTP Act

The Medical Termination of Pregnancy (MTP) Act in India came into existence in 1971. It was amended in 2003 to facilitate better implementation and increase access for women especially in the private health sector.(35)

A small step: On medical termination of pregnancy law amendments

The passing of amendments to the Medical Termination of Pregnancy (MTP) Act in India recently is a step forward in recognising the rights of women, but is no giant leap. It does push the envelope way past how far the now antediluvian MTP Act of 1971 went, primarily by allowing the termination of pregnancy beyond 24 weeks if there are foetal anomalies. However, it also sets the decision on the shoulders of a medical board formed by State governments for this specific purpose. The amended Act also allows the termination of pregnancy until 20 weeks based on the opinion of one qualified doctor, an improvement from the consensus between the two doctors clause that was previously required. As per the amendment, unmarried women can also terminate their pregnancy, and by replacing the word 'husband' with the word 'partner', it, for the first time, takes the dialogue outside the confines of marital relationships that it was trapped in, legally.(36)

What are the Concerns?

Unsafe abortions are the third leading cause of maternal mortality in India, and close to 8 women die from causes related to unsafe abortions each day, according to the United Nations Population Fund (UNFPA)'s State of the World Population Report 2022.

However, the Ministry of Health and Family Welfare's 2019-20 report on Rural Health Statistics indicates that there is a 70% shortage of obstetrician-gynaecologists in rural India. Illicit Abortions leading to Maternal Mortality. (37)

Conclusion

Many women died due to using illegal methods of terminating the pregnancy in unhygienic manner. In the present society, due to emerging social and financial changes, cost of living, nuclear family systems, advancement in culture, lack of belief in Institution of

marriage and also westernized culture prevailing in our society etc., the women are forced to terminate their pregnancy.

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