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ABORTION LAW IN INDIA

CHANGES THEN AND NOW

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THE MEDICAL TERMINATION OF PREGNANCY (MTP) IN INDIA

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A Brief History

In India, The National Family Planning Program came into effect in 1951, making India the first country to have a state-sponsored FP program among the developing countries. While this program has been successful in making available, through public & private sector, the contraceptives for carrying out safe intercourse, the awareness regarding them is still fragmented. It is more concentrated among the urban populace, leaving the rural populace victims of 'unsafe abortions' owing to a lack of knowledge about the efficacy of contraceptives, their potential effects on the body and the ways in which they are to be administered. Widespread taboos about women's sexuality also become inhibiting factors for them to speak openly about these methods, especially in states like Bihar, Jharkhand, Odisha and Madhya Pradesh where a lack of awareness predominates & unintentional pregnancies prevail in large numbers.

In fact, a study conducted in 29 states of India by Mahila Sarvangeen Utkarsh Mandal along with [1]Asia Safe Abortion Partnership shows that around 80% women did not seek abortion owing to a lack of knowledge about the existing abortion law.

Medical Termination of Pregnancy (MTP) Act 1971

[2]The Medical Termination of Pregnancy (MTP) Act 1971 came into effect under such circumstances, after many Indian women echoed the necessity to rule out unplanned and unwanted pregnancies. The act, for all its worth, does help in formulating India's abortion laws, allowing certain women to legally terminate their pregnancies under certain mentioned circumstances. However, to study this act in isolation is to leave out the developments that have taken place in contemporary India, and thus, it becomes indispensable to bring into discussion the present amendment, stated as [3]The medical Termination of Pregnancy (Amendment) Bill, 2020.

MTP (Amendment) Bill 2020

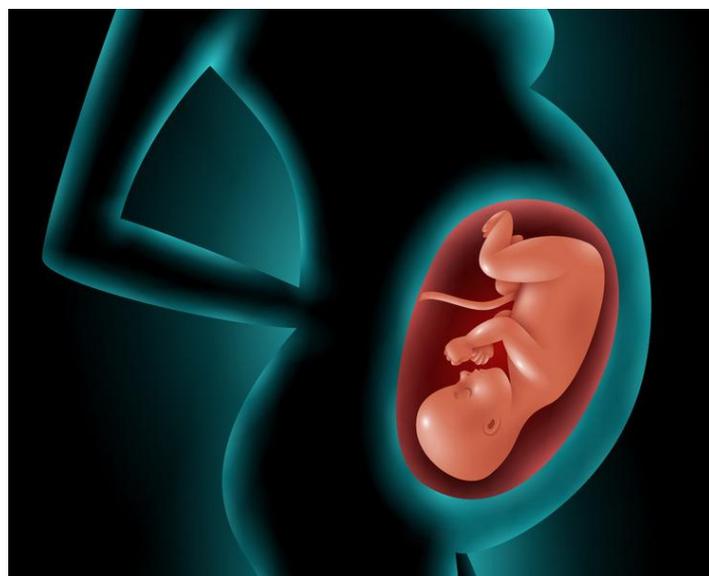
It was only after the act exposed its loopholes to the civil society that many people filed Writ petitions demanding more progressive amendments. It is in the present scenario that the government, taking into consideration the need for changes has finally come out with this amendment. It is here that this analysis seeks to ask whether a span of 49 years has actually brought out changes in women's rights over their bodies.

At first glance, it seems evident that the amendment does bring progressive changes in order to provide "safe, affordable, accessible services" to pregnant women. That it increases the upper gestational limit from 12 weeks to 20 weeks for carrying out an MTP by the consent of a single Registered Medical Practitioner (RMP) and from 20 weeks to 24 weeks for carrying out the same by the consent of two medical practitioners, is indeed a progressive move. Moreover, the termination of pregnancy when occurring due to "failure of any device or method" was earlier only applicable to married women, leaving behind a large section of [4]unmarried women who wished to undergo the process of medical termination.

However, the amendment is hailed as an inclusionary measure for allowing *any woman* to undergo MTP.

And yet, as mentioned earlier, it merely 'seems' to introduce progressive changes when in reality, it fails severely in other important aspects. While it does broaden its reach to include more number of pregnant audiences, it still isn't devoid of its many limitations. The reasons for the flawed nature of this amendment can be categorized as belonging to three different domains:

- (a)The improper use of terminology
- (b)The ambiguity surrounding the audience to which it caters
- (c)Serving as a legislation of 'conditional abortion'
- (d)Its act of reinforcing systemic delays and state control

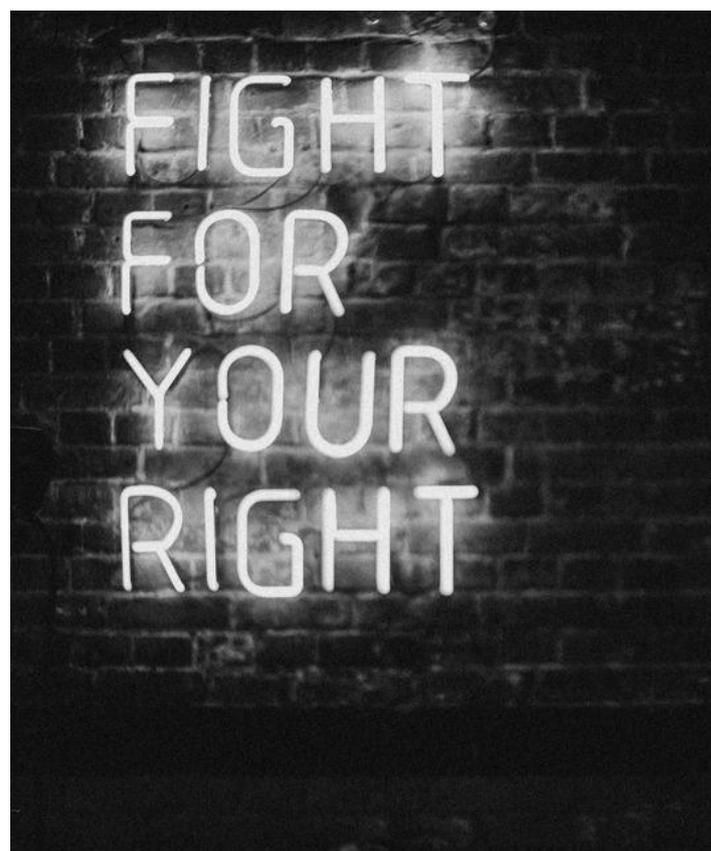


(a) Inappropriate use of terminology

The first problematic issue is with the inappropriate use of terminology. Naming becomes an extremely important instrument of identity appropriation and social reform. As a tool when misused, it furthers societal prejudices and perpetuates inappropriate ideas about a community. Organizations fighting for disability rights, the underprivileged community and minorities have for years voiced out the precarious grounds on which such terminologies rest. After recommendations the term “lunatic” in the Medical Termination of Pregnancy Act, 1971 was later replaced by “mentally ill person” in the 2002 amendment. However, with the 2020 amendment, it seems that again a fatal error is being committed by employing the term “abnormality”.

In a report prepared on recommendations for the MTP (Amendment) Bill, 2020, [5]Pratigya Campaign demands a substitution of the term ‘abnormality’ by ‘anomaly’ as “*abnormalities* reinforces the notion that fetuses with potential disabilities or medical conditions are undesirable. The term ‘abnormality’ is often perceived in conjunction with its binary ‘normality’, making its use highly contested.

Anomaly is more appropriate, for it refers to something which is different or unlike the other, but is not ‘abnormal’. Another inappropriate term is the reference to ‘pregnant women’ which again complicates the issue of sexual identity. Despite the 2014 [6]NALSA judgement which allows for identity self-determination, the continuous employment of the term ‘woman’ in the MTP Bill 2020 leaves out those persons who do not identify themselves as occupying the male/female binary. Thus, instead of the term ‘pregnant woman’, the term ‘pregnant person’ is more adequate to make abortion an option for all pregnant audiences.





Conditional abortion is a violence against women.

(b) The ambiguity surrounding the audience to which it caters

This brings into the discussion the second issue with the bill i.e. the ambiguity surrounding the audience to which it caters. The act which originally catered only to married woman has now been seen as catering to *any woman*.

Even though it is a revolutionary move, it still seems largely interpretative and can be misused for denying abortion rights to diverse pregnant persons in future. It is imperative that different categories of beneficiaries are clearly listed out without any ambiguity or vagueness. The termination of pregnancy, it say, can be carried out only when:

(a)"the continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health"

(b)"there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities.

As is clear from the aforementioned statements, the bill doesn't state provisions for surrogate mothers who may also wish to abort. The two aforementioned conditions are altogether exclusionary. The bill is silent on whether surrogate mothers can abort at will if the intending couple abandons or disowns the child. It seems that the bill should lay down provisions for surrogate mothers in clear and explicit manner.

Also, the post-abortion medical and financial compensation should be stated in alignment with The Surrogacy Act. This is to prevent the occurrence of any unforeseeable circumstances wherein surrogate mothers are denied abortion rights and adequate compensation. The will is further ignored in the way the act mandates the consent of medical practitioners making their consent hold greater prominence than that of the woman on whose body the medical process is to be carried out. Moreover, in its preoccupation with increasing the upper gestational limit, the bill completely forgets about the viability of abortion *at will* for the lower gestational limits.



It does not allow women even in their first trimester (up to 12 weeks) to abort without the consent of any medical practitioner. Further, the increased gestational limit, by making itself applicable under the condition of abnormalities, ignores that any change in wishes or circumstances -whether social, economic, political or familial can also affect the woman's decision to undergo MTP. In fact, by posing these conditions as the only criteria, the amendment specifically ignores : [1]changes in decision arising inter alia out of:

(a) a sudden change in financial condition causing inability to support the child.

(b) the death of or divorce/separation with the partner.

(c) change in political circumstances causing migrant women to move under unfavourable conditions

Further, it only takes into account the mental anguish arising out of of being raped, ignoring altogether social and other factors due to which such anguish can also be caused. Hence, it projects a narrow understanding of what constitutes as 'mental anguish'.

(c) Its act of reinforcing systemic delays and state control

The last problem with the bill is its reinforcing nature of systemic delays and state control over women's bodies. The entire idea of setting up of a "Medical Board" not only invalidates the authenticity of the 'Registered Medical Practitioners' but also defies the aim of the act - "to ensure dignity, autonomy" of pregnant women wishing to terminate. It expects them to be diagnosed by the Medical Board and not by their own consulting practitioners with whom they are the most comfortable. The constitution of the Medical Board not only invades their privacy but also goes against the immediate need to undergo an MTP as evidence has proved that such boards only lead to systemic delays.

Conclusion

It seems as if even after arriving in the "Seventy-first year of the Republic of India", the bill does not provide any independence to women in deciding for their own bodies. In fact, it provides textual evidence for the state control of women's bodies despite the judgement passed by the [7]Court that women can exercise their rights to "procreate as well as to abstain from procreating".



SOURCES

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[5] Pratigya Campaign, an organization which works towards the advancement of women's rights presents a list of recommendations for improving the Medical Termination of Pregnancy (Amendment) Act, 2020

Link: <https://pratigyacampaign.org/wp-content/uploads/2020/04/civil-society-recommendations-on-making-the-mtp-amendment-bill-2020-a-rights-based-legislation.pdf>

[5] 2014 National Legal Services Authority (NALSA) Judgement

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[6] Civil Society Recommendations

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[7] Suchita Srivastava & Anr vs Chandigarh Administration on 28 August, 2009 by the Supreme Court of India.

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