

# Plea in Supreme court (SC) to decriminalize abortion

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## Manifest pedagogy

### In news:

- SC has admitted petition to decriminalise abortion

### Placing it in syllabus:

The article below is linked with two topics in society. They are health and women issues. Women and Health is a major topic in society where the role of State is to be analyzed. The issue of abortion is a debate between pro-choice and pro-life supporters. The entire issue has to be looked at in that context.

### Static dimensions:

- Medical Termination of Pregnancy Act, 1971 provisions

### Current dimensions:

- Positives and negatives of the Act
- What the recent plea is all about

### Content:

The Supreme Court recently admitted a writ petition seeking to **decriminalise abortion** and allowing women the right to exercise their reproductive choice. This right includes “the right to choose whether to conceive and carry pregnancy to its full term or to terminate is it at the core of one’s privacy, dignity, personal autonomy, bodily integrity, self determination and right to health recognised by Article 21 of

the Constitution", the petition has said.

### **Medical Termination of Pregnancy Act, 1971:**

Today only 8% of the world's population lives in countries where the law prevents abortion. In India, Shantilal Shah Committee (1964) recommended liberalization of abortion law in 1966 to reduce maternal morbidity and mortality associated with illegal abortion. On these bases, in 1969, Medical termination of pregnancy bill was introduced in Rajya Sabha and Lok Sabha and passed by Indian Parliament in August 1971. Medical Termination Of Pregnancy Act, 1971 (MTP Act) was implemented from April, 1972. Implemented rules and regulations were again revised in 1975 to eliminate time consuming procedures for the approval of the place and to make services more readily available.

The MTP Act, 1971 preamble states" *an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto*". The preamble is very clear in stating that termination of pregnancy would be permitted in certain cases which are elaborated in the Act itself.

### **Provisions of the MTP Act:**

- A pregnancy may be terminated by a registered medical practitioner :

(a) Where the length of the pregnancy does not exceed 12 weeks if such medical practitioner is, or

(b) Where the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks, if not less than 2 registered medical practitioners are of opinion, formed in good faith that:

1: The continuance of the pregnancy would involve a risk to the life of the pregnant women ;or

- 2: A risk of grave injury to her physical or mental health ;or
- 3: If the pregnancy is caused by rape; or
- 4: There exist a substantial risk that, if the child were born it would suffer from some physical or mental abnormalities as to be seriously handicapped; or
- 5: Failure of any device or method used by the married couple for the purpose of limiting the number of children; or
- 6: Risk to the health of the pregnant woman by the reason of her actual or reasonably foreseeable environment.

**Hence the Act does not permit termination of pregnancy after 20 weeks.**

- The Act clarifies as to whose consent would be necessary for termination of pregnancy.

(a) No pregnancy of a woman, who has not attained the age of 18 years, or who having attained the age of 18 years, is a lunatic, shall be terminated except with the consent in writing of her guardian.

(b) Save as otherwise provided in cl (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

- The Act also indicated that termination of pregnancy could be done only in a place established, maintained or approved by the Government.

The Act was amended and passed on December 18, 2002. Essential features of the amendment are as follows:

- In the amended Act, the word “mentally ill person” covers a wider variety of mental diseases and disorders than the word.
- In the amended Act, recognition of a place for the purpose of carrying out MTP is now at district level

rather than the state capital and hence procedural delays should be less.

In 2014, Supreme Court granted permission for a rape victim to abort her “abnormal” 24-week-old. The victim got relief under an exception in section 5 of the MTP Act, 1971. In order to address the deficiencies in the Act, the health ministry came up with **Medical Termination of Pregnancy (Amendment) Bill, 2014**. The draft MTP (Amendment) Bill of 2014 seeks to amend Section 3 of the principle The MTP Act of 1971 to provide that “the length of pregnancy shall not apply” in a decision to abort a foetus diagnosed with “substantial foetal abnormalities as may be prescribed”.

The current Act does not allow abortions above the gestational age of 20 weeks. However, legal experts have argued that medical science and technology have made the 20-week ceiling redundant and that conclusive determination of foetal abnormality is possible in most cases after the 20th week of gestational age. According to data from The Registrar General of India, Sample Registration System (2001-03), unsafe abortions contribute to 8% of the total maternal deaths.

#### **Features of the draft bill are:**

- Besides increasing the legal limit for abortion from 20 weeks to 24 weeks, the draft Bill allows a woman to take an independent decision in consultation with a registered health-care provider. Under the 1971 Act, even pregnant rape victims cannot abort after 20 weeks, compelling them to move court.
- Taking into account the shortage in doctors and midwives, the draft bill allows registered Ayurveda, Unani and Siddha practitioners to carry out abortions.

As the 2014 draft is yet to see light, the Supreme Court is the last resort of the affected people.

#### **Positives and Negatives of the Act:**

The MTPA is the only social legislation introduced by the government that has found wide acceptance without any resentment.

### **Positives:**

- Unwanted pregnancy is a social stress in all societies. Before the MTP act, unwanted pregnancy was managed by resorting to illegal abortion, infanticide or deserting the newborn in lonely places. Now with the MTP act, the social fears are considerably reduced and the urban and the rural community have taken advantage of the Act.
- Incidence of suicide in women has reduced because they can seek safe abortion under the law.
- The health of the woman has shown improvement as mortality rate has reduced because of the MTP facilities.
- The acceptance of the family planning methods after MTP has increased.
- The problem of a pregnancy caused by rape may effect the mental health of the mother. It is assumed that the victim mother does not want the child and does not want to bear the continuing result of a crime for which she was not culpable. MTP helps the victim in this regard.

### **Negatives:**

- The social implications of MTP in unmarried girls and MTP in married woman are different. MTP in married woman is not considered as a social stigma, whereas MTP in unmarried girls is not easily accepted and hence girls are taken to other distant places for MTP so the girl's social future is not destroyed.
- Though the MTP services are now available in rural areas, its effectiveness and safety is doubtful.
- The high-risk cases are not recognized and MTP is performed in such cases without adequate back-up services. This results in immediate complications and

long-term morbidity in term of infertility, menstrual disturbances and pelvic inflammatory disease (PID).

- These long-term complications may have social implications in form of broken marriages, divorce, and promiscuity.

### **Present plea is all about:**

A Bench led by Chief Justice of India Ranjan Gogoi has issued notice to the Centre on their contention that several provisions of the MTP Act of 1971 imposes severe restrictions on the reproductive choice of a woman, her personal liberty and bodily autonomy. The court has asked the government to respond to the petition.

### **The contentions mentioned in the petition are:**

1. The law allows a woman to abort only if continuance of the pregnancy, according to a medical practitioner, involves a risk to her life; grave physical or mental injury; or risk of serious foetal abnormalities. This is the case even in case the pregnancy is less than 12 weeks old. The first trimester of pregnancy entails lesser risk for abortion.
2. The State has no legitimate interest for interfering in the right of reproductive choice of a woman, curtailing her right to terminate her pregnancy.
3. Abortion, as per the 1971 Act, is not permissible after 20 weeks of pregnancy. This is excessive and harsh.
4. Several genuine cases had come up where fetuses with serious risk of abnormalities causing grave risk to the physical and mental health of the mother were noticed after the 20-week period. As a result, many women were forced to move the [Supreme Court](#) for permission to end their pregnancy. This had led to a lot of mental and financial hardship to pregnant women.
5. The law adversely affects the sexual autonomy of single women. While it protects married woman by allowing them

to terminate an unplanned and unwanted pregnancy, the same is not extended to single women. Hence the *provision treats equals unequally*.

6. Studies suggest that unmarried sexually active women face considerable obstacles to contraceptive use and abortion facilities.

In countries where abortion is legal, death rates are usually below 1 per 100,000 procedures. In developing countries like India with scarce medical resources treatment of complications of abortion often poses a heavy burden on the health care system. According to recent estimates made by the World Health Organization, about one-quarter to one-third of maternal deaths are due to complications of (illegally) induced abortion. This can be prevented through offering easily accessible safe abortion services and through family planning services and education